Supreme Court, U.S.
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No. _____

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In The

Supreme Court of the United States

WILLIE SANTONIO MANDERS,

Petitioner,

v.

WINSTON PETERSON, In his official capacity as Sheriff of Clinch County, Georgia,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

Whether *McMillian v. Monroe County*, 520 U.S. 781 (1997) was intended to shield all governmental entities for whom the sheriff acts, including agents of the sheriff, from §1983 liability for use of excessive force if it is determined that because the sheriff's authority to use force is conferred by State law, he or she is an arm of the State and is therefore entitled to Eleventh Amendment immunity?

II.

Whether the decision below conflicts with holdings of the Courts of Appeals for the First, Fourth, Fifth, Sixth, Seventh, and Ninth Circuits by holding that the sheriff is entitled to Eleventh Amendment immunity as an arm of the State, although the sheriff is the final policymaker for the county in a particular matter at issue and State law provides no indication that the State would bear any actual or potential liability for any adverse judgment against the sheriff for a §1983 violation?

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OPINIONS BELOW

The July 28, 2003, 6 to 5 en banc opinion of the Eleventh Circuit is reported as *Manders v. Lee,* No. 01-13606 (11th Cir. 2003), and is reproduced in the appendix to this petition, Appendix 1. The March 14, 2002, panel opinion of the Eleventh Circuit is reported as *Manders v. Lee*, 285 F.3d 983 (11th Cir. 2002) and it is reproduced in the appendix to this petition, Appendix 90. The August 14, 2002, order of the Eleventh Circuit vacating the March 14, 2002, panel opinion and granting rehearing en banc is reproduced at Appendix 139. The June 7, 2001, order of the United States District Court for the Middle District of Georgia denying Sheriff Peterson's motion for reconsideration is unreported and is reproduced at Appendix 141. The March 29, 2001, order of the United States District Court for the Middle District of Georgia denying Sheriff Peterson's motion for summary judgment is unreported and is reproduced at Appendix 143.

JURISDICTION

The opinion of the Court of Appeals was issued July 28, 2003. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

42 U.S.C. §1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be

subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and law shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

The following state constitutional provisions and statutes that are found at Appendix pp. 171 *et seq*. Ga. Const. art. VI §4 ¶1; IX, §§1, ¶1; ¶2(c)(1); ¶3(a)-(b); O.C.G.A. §§1-3-3(7); 15-6-8; 15-6-24; 15-7-4; 15-12-61; 15-12-62; 15-12-68; 15-12-71; 15-12-78; 15-12-80; 15-12-82; 15-12-100; 15-12-101; 15-16-1; 15-16-3; 15-16-5; 15-16-10; 15-16-20; 15-16-23; 15-16-26; 15-16-27; 16-10-24; 17-6-15; 17-7-1; 17-6-15; 17-10-1; 17-12-32; 35-3-36; 36-1-3; 36-1-4; 36-1-21; 36-1-22.1; 36-8-1; 36-8-2; 36-8-5; 36-9-5; 36-9-8; 42-4-1; 42-4-4; 42-4-5; 42-4-7; 42-4-11; 42-4-12; 42-4-5; 42-4-31; 42-5-50; 42-5-51; 42-5-53; 45-4-7; 45-5-6; and 50-21-24. Calif. Const. art. IV §18; art. XI §§1(b) and 4(c). CGC §§815.2; 970.2; 2400; 3060; 12524; 12560; 12561; 23004; 24000; 24205; 25300; 25303; 26603; and 34501. Ill. Const. art. VII §2; S.H.A. 55 ILCS 5/5-1106; S.H.A. 730 ILCS 125/2; S.H.A. 730 ILCS 125/5; S.H.A. 730 ILCS 125/12; S.H.A. 730 ILCS 125/20. Mass.Gen.Laws Ann. Ch. 126 §16; 127 §30; and 33. Mich. Const. Article 7. Tex. Code Crim. P. art. 2.13 and Tex. Code Crim. P. art. 2.17.

STATEMENT OF THE CASE

In May 1997, police officers from the City of Homerville arrested Mr. Manders and transported him to the Clinch County Jail. As he was escorted into the jail's holding cell, a City police officer stated that Manders "hit him" earlier.[1] According to Mr. Manders, the chief jailer and a City police officer then repeatedly struck him across the head, neck, and face and banged his head against a wall. He suffered a bruised, swollen face. The beating affected him emotionally, resulting in a mental hospital stay. Appendix ("App.") 3.

The morning after the beating, Mr. Manders was forced to write a statement, at Sheriff Peterson's and another officer's direction, in which he stated: "They had to be rough with me to let me know that they mean business." That same day he was released from jail. Afterwards, his mother met with Sheriff Peterson to discuss the beating. Sheriff Peterson responded to his mother's concerns about the beating by saying: "[T]hat happens sometimes when they bite and scratch." Sheriff Peterson did not investigate the beating incident. *Id.*

Sheriff Peterson published a Policy and Procedure Manual (the "Manual") for use by the Clinch County Sheriff's Department that he drafted himself. *Id.*, 3-5. In drafting the Manual, Sheriff Peterson created some policies and adopted others from state policies. Sheriff Peterson had no published policy for the use of force by

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[1] The Record does not reflect any evidence that Manders "punched" a City of Homerville Police Officer, as asserted by the Eleventh Circuit in the statement of the facts. *See* App. 2.

deputies at the Clinch County Jail. *Id.*, 5, 149. Sheriff Peterson has not taken the position in this case that the situation at the jail was covered by any policy articulated in the Manual.

Mr. Manders filed an amended complaint that contained claims against Thurman Lee, the Chief of Police of Homerville, Georgia, individually and in his official capacity, Homerville, Georgia, Deputy Sheriff Alan Brown, individually and in his capacity as an employee of Clinch County, Officer Bart Crews, individually and in his capacity as an employee of Homerville, Georgia, Sheriff Winston Peterson, individually and in his capacity as an employee of Clinch County, and Clinch County for their involvement in Manders' beating. *Id.*, 5.

Specific as to the facts relevant to this petition, Manders claims that Clinch County and Sheriff Peterson, in his official capacity, are responsible for use-of-force policy at the jail, for training and disciplining deputies who work at the jail, and for ensuring that the policy is followed. *Id.* According to Manders, the chief jailer beat him and Clinch County and Sheriff Peterson permitted the chief jailer's use of excessive force at the jail. Manders also asserts that Clinch County and Sheriff Peterson failed to provide deputies proper training and supervision regarding use of force at the jail and failed to promulgate adequate rules to regulate deputies' conduct at the jail. Finally, Manders asserts that these failures caused his beating. Manders sought damages from among others, Clinch County and Sheriff Peterson in his official capacity. *Id.*

The district court granted partial summary judgment, dismissing all of the claims against Chief Lee and the City

of Homerville. *Id.*, 143-60. The court also dismissed the individual claims against Sheriff Peterson and the claims against Sheriff Peterson in his official capacity, as well as the §1983 claim against Clinch County, alleging negligent hiring and retention of deputy Brown and Mander's claim for injunctive relief. *Id.*, 5. The district court found that Sheriff Peterson is the Clinch County representative who establishes the policy for the use of force when dealing with inmates at the county jail. *Id.*, 147. The district court also found that there was an issue of fact as to whether Sheriff Peterson's statement: "[T]hat happens sometimes when they bite and scratch" is evidence of a governmental policy or custom with regard to the use of force that caused Manders' injuries. *Id.*, 149. Sheriff Peterson filed a motion for reconsideration, emphasizing for the first time that he was a state and not a county official. *Id.*, 161, *et seq*. The district court denied the motion and Sheriff Peterson filed an interlocutory appeal. *Id.*, 6.

After affirming the denial of summary judgment *Id.*, 138, the Eleventh Circuit granted Sheriff Peterson's motion for rehearing en banc. *Id.*, 139. A majority of the Eleventh Circuit in a 6 to 5 en banc opinion reversed the district court's denial of summary judgment as to Sheriff Peterson, finding that although the Sheriff is responsible for the operation of the Clinch County Jail, for establishing use-of-force policy at the jail, and for hiring, training, and disciplining his deputies who work in the jail, *Id.*, 45-7, he is a State official and has Eleventh Amendment immunity from suit brought in federal court under §1983. *Id.*, 47.

The majority began its review of the Eleventh Amendment by asserting that if a defendant were acting as an "arm of the State" when certain acts were committed, he

or she would be immune from suit in federal court under Eleventh Amendment immunity, *citing Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274, 280 (1977). The majority stated that to be an "arm of the State" one must "only" be acting as an "agent" or "instrumentality" of the State at the time the complained of action occurred. The majority cited *Regents of the University of California v. Doe,* 519 U.S. 425, 429-30 (1997). App. 8. The majority then stated that the "particular functions at issue are Sheriff Peterson's force policy at the jail and the training and disciplining of his deputies, in that regard." App. 8-9.

The majority then stated the "four factors" to be considered in determining whether an entity was "an arm of the state" for Eleventh Amendment purposes. *Id.*, 9. After stating factors: 1) how the state law defines the function; 2) the degree of control the State maintains over the function; 3) where the entity derives its funds; and 4) who is responsible for the judgments against the entity, the majority undertook an examination of Georgia law as a condition precedent to examining the four factors. *Id.*, 10.

The majority reviewed certain provisions of the Georgia Constitution for the proposition that: the sheriff's office is an elected constitution office[2] and not a subdivision of the county governing body[3]; the State legislature has exclusive authority to establish and control the sheriff's powers and duties[4]; the sheriff's office is not a subdivision

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[2] Ga. Const. art. IX §1, ¶1.

[3] Ga. Const. art. IX §2, ¶1(c)(1).

[4] Ga. Const. art. IX §3(a)-(b).

or sub-unit of Clinch County or its county governing body[5]; and that the sheriff's office is a constitutional office independent from Clinch County[6]. *Id.*, 11. After a thorough discussion, *Id.*, 12-28, the majority then concluded that the county had no "authority over what corrections duties sheriffs perform, or which state offenders serve time in county jails, or who is in charge of the inmates in county jails." *Id.*, 28-9. In relying on these constitutional provisions, the majority supported its earlier conclusion that: the county is separate from and independent of the sheriff's office; the county has it own Board of Commissioners with exclusive jurisdiction over county affairs; and although the county funds the sheriff's budget, it has no authority over the sheriff. *Id.*, 12-13.

The majority also examined the relationship between the county and the sheriff's office. In demonstrating the "separate and distinct nature of Sheriff Peterson's office and Clinch County," the majority reviews Georgia case law[7] and the Constitution to demonstrate that: the sheriff alone may hire and fire deputies; deputies serving as

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[5] Ga. Const. art. IX §1, ¶1.

[6] Ga. Const. art. IX §2, ¶1(c)(1).

[7] *Chaffin v. Calhoun*, 262 Ga. 202, 203-04 (1992); *Boswell v. Bramlett*, 274 Ga. 50, 52 (2001); *Warren v. Walton*, 231 Ga. 495, 499-500 (1973); *Board of Commissioners of Randolph County v. Wilson*, 260 Ga. 482 (1990); O.C.G.A. §§36-1-3, 1-3-3(7); *Drost v. Robinson*, 194 Ga. 703, 710 (1942); *Brown v. Jackson*, 221 Ga. App. 200, 201 (1996); *Wayne County v. Herrin*, 210 Ga. App. 747, 751 (1993); *Pettus v. Smith*, 174 Ga. App. 587, 588 (1985); *Mobley v. Polk County*, 242 Ga. 798, 801-02 (1979); *Kendrick v. Adamson*, 51 Ga. App. 402 (1935); *Brett v. Jefferson County*, 123 F.3d 1429, 1484 (11th Cir. 1997); O.C.G.A. §15-16-23; *Tate v. National Sur. Corp.*, 58 Ga. App. 874, 876 (1938); O.C.G.A. §§41-4-1 and 36-1-21.

jailers are employees of the sheriff and not the county; and employees of a constitutionally elected official are employees of the elected official and not the county, as represented by the local governing authority. *Id.*, 11-4.

After establishing that the sheriff's office is separate and distinct from the county, the majority examines how the sheriff's office functions in light of the three areas of responsibility established under Georgia law: law enforcement,[8] state courts[9], and corrections[10]. *Id.*, 14-27. With regard to corrections, the majority noted: "The State

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[8] *Hannah v. State*, 212 Ga. 313 (1956); O.C.G.A. §15-16-10(a)(1)-(8); O.C.G.A. §35-8-2(8)(A); O.C.G.A. §35-3-3 *et seq*; O.C.G.A. §35-2-30 *et seq;* O.C.G.A. §36-8-5; O.C.G.A. §36-8-1(b); O.C.G.A. §36-8-2; O.C.G.A. §35-3-36; *Grech v. Clayton County,* 335 F.3d 132 (11th Cir. 2003).

[9] Ga. Const. art. VI §4 ¶1; O.C.G.A. §15-6-8(1); 15-7-4; O.C.G.A. §15-6-24; O.C.G.A. §15-16-10(a)(1); O.C.G.A. §15-16-10(a)(2); O.C.G.A. §15-16-10(a)(4)-(6); O.C.G.A. §15-16-10(a); O.C.G.A. §15-16-10(b); O.C.G.A. §15-12-82(d); O.C.G.A. §15-12-65; O.C.G.A. §17-6-15; O.C.G.A. §17-6-15(b)(1); O.C.G.A. §17-6-50; *Jarvis v. J&J Bonding Co.*, 239 Ga. 213, 215 (1977); O.C.G.A. §15-16-27(a); O.C.G.A. §15-16-27(b); O.C.G.A. §17-12-30 *et seq*; O.C.G.A. §17-7-26; O.C.G.A. §17-7-27; Georgia Indigent Defense Act of 2003; O.C.G.A. §15-16-27.

[10] O.C.G.A. §42-4-4; O.C.G.A. §42-4-4(a)(1)-(2); *In re Irvin*, 254 Ga. 251, 253 (1985); O.C.G.A. §42-4-12; O.C.G.A. §16-10-24(b); O.C.G.A. §42-4-11; O.C.G.A. §42-5-50(b); O.C.G.A. §42-5-51(b); *Howington v. Wilson*, 213 Ga. 664, 665 (1967); *State v. Middlebrooks,* 236 Ga. 52-53 (1976); O.C.G.A. §42-5-51(c); Ga. Comp. R. & R. Regs. §125-2-4-.02(d); *Eubanks v. State*, 229 Ga. App. 667, 668 (1997); *Helmeci v. State*, 230 Ga. App. 866, 871 (1998); O.C.G.A. §17-10-1(a)(3)(A); Ga. Op. Atty. Gen. No. 82-33 (1982); O.C.G.A. §42-5-51(d); *Clayton County v. Evans*, 258 Ga. 146, 147 (1988); O.C.G.A. §17-10-3(a)(1)-(3); O.C.G.A. §42-4-4(a)(3); O.C.G.A. §42-5-53; O.C.G.A. §42-4-4(a)-(c); O.C.G.A. §42-4-5; O.C.G.A. §42-4-31(a); O.C.G.A. §42-4-4(b); O.C.G.A. §17-7-1; O.C.G.A. §42-4-7; O.C.G.A. §42-4-7(a); and *Griffin v. Chatham County*, 244 Ga. 628 (1979).

requires that the sheriff take custody of all inmates in the jail in his county." *Id.*, 22. The majority then reviewed the broad range of duties and responsibilities a Georgia sheriff has to maintain and transport pre-trial detainees and convicted felons placed in their custody pursuant to State law. *Id.*, 22-9. In general support of its approach and analysis, the majority cites *McMillian* for the proposition that "sheriffs historically had geographic restrictions but in reality 'represented the State in fulfilling [their] duty to keep the peace.'" *Id.*, 17.

After having set forth in detail the duties and functions of the sheriff, the majority then considered the "Eleventh Amendment factors" to determine "whether Sheriff Peterson is 'an arm of the State' in establishing force policy at the jail and in training and disciplining his deputies in that regard." *Id.*, 29-30. The majority reviewed the first factor, how the State law defines the entity, and observed that under Georgia law: "The sheriff's authority to use force or tools of violence, whether deadly or non-deadly force, and the sheriff's obligation to administer the jail are directly derived from the State and not delegated through the county entity." *Id.*, 29-31. The majority stated further: "In administering the jail, the sheriff does not check his arrest powers or force authority at the door. . . . While the jail context is important, it is likewise significant that the sheriff's force policy is at issue in many settings and that location alone does not control." *Id.*, 31.

As to the second factor, where State law vests control, the majority stated that: "In addition to mandating and controlling sheriffs' specific duties as outlined above, only

the State possesses control over sheriffs' force policy and that control is direct and significant in many areas, including training[11] and discipline.[12]" *Id.*, 32. The majority observed with regard to control[13] that: "[I]n contrast, counties have no authority, control over, or involvement in Sheriff Peterson's force policy at the jail, or his training and disciplining of deputies in that regard." *Id.*, 37.

As to the third factor, where the entity derives its funds[14], the majority found that state funds are involved "to some extent in the particular functions of Sheriff Peterson at issue." *Id.*, 36. The majority observes that: "[w]hile Clinch County bears the major burden of funding Sheriff

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[11] O.C.G.A. §15-16-3; O.C.G.A. §15-16-13(a); O.C.G.A. §15-16-1(a); O.C.G.A. §15-16-3(d); O.C.G.A. §15-16-3(e)(4); O.C.G.A. §15-16-3(e)(1),(4).

[12] O.C.G.A. §15-16-26; O.C.G.A. §15-16-26(a),(c); O.C.G.A. §45-5-6; *Gipson v. Bowers*, 263 Ga. 379 (1993); *Owens v. Fulton County*, 877 F.2d 947, 951-52; O.C.G.A. §15-6-82; O.C.G.A. §§15-16-10(b) & 42-4-4(c).

[13] O.C.G.A. §15-12-71(c) (2001); O.C.G.A. §15-12-78; O.C.G.A. §§15-12-61, 15-12-71, 15-12-74, 15-12-82, 15-12-100; O.C.G.A. §15-12-71(b)(2); O.C.G.A. §§15-12-71(a); 15-12-80; 15-12-100(a), 15-12-101; O.C.G.A. §15-12-62, 15-12-68; O.C.G.A. §15-12-71(b)(1); O.C.G.A. §15-12-71(b)(3); O.C.G.A. §15-12-78.

[14] O.C.G.A. §§36-9-5; 42-5-2(a); 15-16-20; 45-4-7; O.C.G.A. §42-5-2(a); O.C.G.A. §42-5-50(d); Ga. Comp. R. & Regs. §125-2-4.02(d); *Epps v. Gwinnett County*, 231 Ga. App. 664, 670 (1998); *Cherokee County v. North Cobb Surgical Associates*, 221 Ga. App. 496, 499 (1996); *Macon-Bibb County Hospital Authority v. Houston County*, 207 Ga. App. 530, 531-32 (1993); *Chaffin v. Calhoun*, 262 Ga. 202, 203-04 (1992); *Boswell v. Bramlett*, 274 Ga. 50, 52 (2001); *Board of Commissioners of Randolph County v. Wilson*, 260 Ga. 482 (1990); *Wolfe v. Huff*, 232 Ga. 44, 45 (1974); O.C.G.A. §42-5-2; Ga. Const. art. IX §1, ¶3(a); *McMillian v. Monroe County*, 520 U.S. 781 (1997); *City of St. Louis v. Praprotnik*, 485 U.S. 112, 125 (1988); Ga. Const. art. IX §2, ¶1(c)(1).

Peterson's office and the jail, it is because the State so mandates." *Id.*

As to the fourth factor, liability for the adverse judgment, after discussing *Hess v. Port Authority Trans-Hudson Corp.*, 513 U.S. 30, 35-39 (1994), *Regents of the University of California v. Doe,* 519 U.S. 425, 430-31 (1997), and *Shands Teaching Hospital and Clinics, Inc. v. Beech Street Corp.*, 208 F.3d 1308 (11th Cir. 2000), the majority concluded that although neither the county nor the State would be required to pay an adverse judgment against Sheriff Peterson, App. 41-6, the funds would have to come from the sheriff's budget. *Id.*, 46-7. If a significant adverse judgment were to occur both county and state funds would be "implicated because Sheriff Peterson would need to seek a greater total budget from the county for his office and a greater daily rate from the State for felony offenders serving their state sentences in the county jail." *Id.* In relying on *Hess*, 513 U.S. at 39-40, the majority concludes: "The State's 'integrity' is not limited to who foots the bill, and, at a minimum, the liability-for-adverse-judgment factor does not defeat Sheriff Peterson's immunity claim." *Id.*, 48.

The majority concludes "that Sheriff Peterson in his official capacity is an arm of the State, not Clinch County, in establishing use-of-force policy at the [Clinch County] jail and in training and disciplining his deputies in that regard." *Id.* In support of this conclusion, the majority states:

> Sheriffs' duties and functions are derived directly from the State, performed for the State, and controlled by the State. The State of Georgia has exercised its managerial prerogative: (a) to incarcerate state offenders, pretrial and post-conviction, in

> county jails, among other locations; (b) to assign sheriffs certain specific state functions in law enforcement, state courts, and corrections, including making sheriffs in charge of state offenders in county jails; (c) to control sheriffs' duties, train sheriffs in those duties, and discipline sheriffs; (d) to preclude any county control over sheriffs but nonetheless require counties to fund jail structure and sheriff's budgets; and (e) for the State to pay for sheriffs' training and discipline, as well as certain state offenders in the county jail. Given these principles of Georgia law, we conclude that sheriffs act for the State, not counties, as to the functions in issue.

Id., 49.

Five members of the court held a dissenting view expressed in two separate opinions. One dissenting opinion asserts that the majority "misapplies the appropriate Eleventh Amendment analysis." *Id.*, 50. This dissent cites *Hess* to assert that there are twin reasons that are to be used as a guide to determine immunity: the first is whether it would be "disrespectful" or a "threat to the dignity" of the state to require a state to answer a complaint in federal court. *Id.*, 52. A second reason cited by this dissent is that this Court has "characterized this state treasury factor as 'the Eleventh Amendment's core concern.'" *Id.*,[15] quoting

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[15] The dissent cites cases from other circuits that have followed this view of *Hess*: *Vogt v. Board of Commissioners*, 294 F.3d 684, 689 (5th Cir. 2002); *Streit v. County of Los Angeles*, 236 F.3d 552, 567 (9th Cir. 2001); *Harter v. Vernon*, 101 F.3d 334, 338-39 (4th Cir. 1996); *Sonnenfeld v. Denver*, 100 F.3d 744, 749 (10th Cir. 1996); *Christy v. Pennsylvania Turnpike Commission*, 54 F.3d 1140, 1145, 1149-50 (3d Cir. 1995). *See*, App. 50, n.3.

Hess, 513 U.S. at 51. In applying the second reason, the dissent notes that this Court has discounted the significance of the control factor. App. 53. The dissent notes "that the control factor discounted in *Hess* was much more direct and significant than the control exercisable by the state in the instance case." *Id.*, 54. Because the other immunity indicators point "at best" in "different directions", the dissent relies on the "twin reasons" in *Hess* for guidance and concludes that they point "against Eleventh Amendment immunity." *Id.*, 56. The dissent cites *Franklin v. Zabura*, 150 F.3d 682 (7th Cir. 1998) for the proposition that because a sheriff is not an agent of the county it does not follow, *a priori*, that he or she must be an agent of the State. App. 57.

The second dissenting opinion addresses several factual and legal points raised by the majority and reaches a contrary conclusion. First, the jail is "quintessentially" a local institution separate and apart from the state's prison system. *Id.* Second, the operation of the jail is the county and county sheriff's responsibility. *Id.* Third, counties may be liable under 42 U.S.C. §1983 "for policies they adopt or customary practices they tolerate in operating local governmental facilities." *Id.*[16] The dissent defines the relevant function, not as "establishing use-of-force policy at the jail and . . . training and disciplining his deputies in that regard" but "operating a jail." *Id.*, 58. "The point of

[16] The dissent cites *Streit v. County of Los Angeles*, 236 F.3d 552, 567 (9th Cir. 2001); *DeGenova v. Sheriff of DuPage County*, 209 F.3d 973, 977 (7th Cir. 2000); *Doe By and Through Doe v. Washington County*, 150 F.3d 920, 923-24 (8th Cir. 1998); *Dotson v. Chester*, 937 F.2d 920, 934 (4th Cir. 1991); and *Blackburn v. Snow*, 771 F.2d 556, 571 (1st Cir. 1985). See, App. 52-3, n.6.

identifying the pertinent governmental function in each case is to keep our analysis focused on the discrete set of positive state law authorities that define the particular area of official responsibility at issue." *Id.*, 59, *citing McMillian* and *City of St. Louis v. Praprotnik*, 485 U.S. 112, 125 (1988).

The dissent asserts:

> In the course of its effort to integrate these state laws into a sort of unified theory of Georgia sheriffs, the majority deploys two arguments that misstate the law and have implications of tremendous breadth.
>
> First, the majority suggests that sheriffs are entitled to Eleventh Amendment immunity because their authority to use force is conferred by the state. *See* Majority Opinion at 29. This logic marks a blatant end-run around our function-by-function approach. As the majority itself points out, sheriffs may exercise force "in initial arrests, in subduing inmates in sessions of state superior courts, or in quelling disruptive inmates in county jails." *Id.* If sheriffs are state agents simply because their authority to use force originates in state law, then it must be they act as state agents whenever engaged in a capacity that requires the deployment of force – which is to say, in virtually every function sheriffs have traditionally served.

Id., 60-1.

The dissent then analyzes the Eleventh Amendment factors. In analyzing state law, the dissent finds that the Georgia Constitution's unequivocal designation of sheriffs as "county officers", Ga. Const. art. IX §1, ¶3, and the

Georgia Code that establishes "By virtue of their offices, sheriffs are jailers of the counties and have the authority to appoint other jailers, subject to the supervision of the county governing authority, as prescribed by law," O.C.G.A. §42-4-1(a), to be dispositive on the issue. App. 63-4. The dissent notes that the majority focuses not on the designation of the sheriff as a "county officer" and the identification of jails as "county institutions" but rather on "Sheriff Peterson's use of force policy." *Id.*, 65. The dissent notes: "The Georgia statute authorizing sheriffs to use force sheds no light whatsoever on whether the sheriff acts for the state or the county in doing so." *Id.* The dissent concludes this analysis by stating: "The majority's designation of 'force policy' as the function to consider in this case culminates in a fatally flawed analysis of how state law defines the defendant. Among the casualties of the majority's misguided discussion are the function-by-function approach that our law compels and the well-established notion that local governmental entities, despite being defined by state law, are independent of the state." *Id.*, 72

As to the "control" issue, the dissent recounts the fact that Georgia law, O.C.G.A. §42-4-4(a)(1), requires the county's sheriff to take "custody of the jail and the bodies of such prisoners as are confined therein", to "furnish" "medical aid, heat, and blankets," *Id.*, §42-4-4(a)(2), "as well as to commit persons to jails of nearby counties should the local facility prove unsafe." §42-4-4(a)(3). The dissent notes that the county builds "the jails operated by their sheriffs." *Id.*, §36-9-5(a). App. 73. The dissent asserts: "Sheriffs exercise . . . undiluted authority to operate what are indubitably county institutions." *Id.*, 78. The dissent also dismisses "training" by the State as an indication of

control. *Id.*, 79-81. The dissent also notes that the governor's power to suspend the sheriff is not unilateral and is not without conditions precedent. *Id.*, 81-2.

As to the issue of funds, the third factor, the dissent notes that the county appropriates Sheriff Peterson's entire budget, O.C.G.A. §§36-5-22.1, 15-16-20, 45-4-7, and 15-16-5, as well as the costs of building and operating jails. *Id.*, §§36-9-5, 42-5-2(a). App. 83. The dissent notes that the majority relies upon the "force policy" function and the cost of such training in the use of force, *id.*, rather than the "statutes requiring counties to pay for the jail's construction, upkeep, and operation. *See*, O.C.G.A. §§36-9-5, 36-9-8, 42-5-2." App. 83.

As to the issue of the State's liability for adverse judgment, fourth factor, the dissent asserts that a showing that the state would not be liable for a judgment "cuts strongly against . . . immunity." *Id.*, 86, *citing, Regents of the University of California v. Doe*, 519 U.S. 425, 430 (1997) and *Auer v. Robbins*, 519 U.S. 452, 456 n.1 (1997). The dissent makes the distinction between county immunity under state law and immunity from liability under 42 U.S.C. §1983, noting that county immunity under state law does not render them immune from liability under 1983 for violations of federal rights. App. 85.

This petition follows the Eleventh Circuit's 6 to 5 en banc decision. It raises the majority's decision regarding the determination that the sheriff is a state official, when acting as chief jailer on matters concerning the use of force on inmates in the jail.

REASONS FOR GRANTING THE WRIT

I. THE MAJORITY OPINION RAISES QUESTIONS ABOUT THE SCOPE OF *McMILLIAN V. MONROE COUNTY* AND WHETHER IT WAS INTENDED TO SHIELD ALL GOVERNMENTAL ENTITIES FOR WHOM THE SHERIFF ACTS, INCLUDING AGENTS OF THE SHERIFF, FROM §1983 CLAIMS FOR USE OF EXCESSIVE FORCE BECAUSE THE SHERIFF'S AUTHORITY TO USE FORCE IS CONFERRED BY THE STATE AND THUS THE SHERIFF IS AN ARM OF THE STATE AND ENTITLED TO ELEVENTH AMENDMENT IMMUNITY

This Court stated in *McMillian* that the inquiry should be "guided by two principles." The first is: "to ask whether officials are final policymakers for the local government in a particular area, or on a particular issue." Second, the "inquiry is dependent on state law." *McMillian v. Monroe*, 520 U.S. at 786. The majority answers to the first question by stating that Sheriff Peterson is the final policymaker on the use of force at the Clinch County jail. App. 2, 45. Both dissenting opinions base their opinions on the unspoken assumption that this statement is correct. *See*, App. 48-54; 55-89.

It is with the second question of determining and applying state law that issues arise. The questions to be answered by state law are: what is the definition of the function, who has control over the function, who funds the function, and who would pay the judgment. App. 9. In *Hess v. Port Authority Trans-Hudson Corporation*, 519 U.S. 30 (1994) the Court stated that the most important factor in determining whether a governmental entity is entitled to Eleventh Amendment immunity is whether a judgment against it would be paid from the state treasury. 513 U.S. at 48. The Court has affirmed that holding, *see*, *Auer v.*

Robbins, 519 U.S. 452 (1997). Various circuit courts have followed. *See, Seyville Parks v. Piedmont Technical College,* 76 F.3d 374 (4th Cir. 1996); *Hudson v. City of New Orleans*, 174 F.3d 677 (5th Cir. 1999); *Mercer v. Magnant*, 40 F.3d 893 (7th Cir. 1994); *In re: Merchants Grain, Inc.*, 59 F.3d 630 (7th Cir. 1995); *City of Long Beach v. Standard Oil Company of California*, 53 F.3d 337 (9th Cir. 1995); and *Elam Construction, Inc. v. Regional Transportation District,* 127 F.3d 1109 (10th Cir. 1997).

The majority appears to read *McMillian* in such a manner as to diminish the importance of *Hess.* It appears to do so by interpreting state law in such a manner that merely by determining the function performed by the sheriff in a particular situation, the court may determine that the sheriff is an arm of the State. App. 31. After it is determined that the sheriff is an arm of the State, it follows in the majority's view that a judgment against the sheriff in his or her official capacity will necessarily impact the integrity of the state, regardless of the entity for whom the sheriff may have been acting. *Compare*, the majority opinion, App. 31, with one of the two minority opinions. *Id.*, 59.

By creating a use of force "function" as the "entity" to be investigated under state law, the majority appears to have expanded its mandate to examine the applicable law and has chosen instead to redefine it by stating that the sheriff is an arm of the state when establishing use of force policies. *See*, App. 59-60. The majority's analysis which led to this conclusion appears to run counter to the premise of the Court's analysis in *St. Louis v. Praprotnik,* 485 U.S. 112 (1988). In *Praprotnik* the Court stated: "[a] federal court would not be justified in assuming that municipal policymaking authority lies somewhere other

than where the applicable law purports to put it." 485 U.S. at 116-7.

Praprotnik affirms this Court's holding that a local government may be sued directly "if it is alleged to have caused a constitutional tort through 'a policy statement, ordinance, regulation, or decision officially promulgated by that body's officers.'" 485 U.S. at 121 (quoting, *Monell v. New York City Department of Social Services*, 436 U.S. 658, 690. In following the mandate of *McMillian*, to determine for whom the sheriff acts, App. 9, n.9, the majority is led to the conclusion that the sheriff is an arm of the State although there is no dispute that: 1) Sheriff Peterson is the final policy maker for the Clinch County jail on the use of force, App. 2, 45; 2) Clinch County operates the Clinch County Jail, App. 36; 3) Sheriff Peterson is the "jailer of the county" and is responsible for the safety of the inmates,[17] App. 22; and 4) No state funds would be used to pay any judgment against Sheriff Peterson if he were found liable for violations of §1983.[18] App. 46.

Review of the majority opinion is requested in light of its interpretation of *McMillian* and its potential impact on §1983 cases in other circuits, as well as for its impact on *Praprotnik* and *Hess*.

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[17] *Kendrick v. Adamson*, 51 Ga. App. 402 (1935) and O.C.G.A. §42-4-1.

[18] The county funds a bond for the sheriff under Georgia law. O.C.G.A. §36-1-4 and *Drost v. Robinson*, 194 Ga. 703, 710 (1942). Further, the sheriff in Georgia cannot be sued in state court in his official capacity for "assault" or "battery." O.C.G.A. §50-21-24.

II. THE MAJORITY OPINION CONFLICTS WITH THE HOLDINGS OF THE COURTS OF APPEALS OF THE FIRST, FOURTH, FIFTH, SIXTH, SEVENTH, AND NINTH CIRCUITS BY HOLDING THAT THE SHERIFF IS AN ARM OF THE STATE AND IMMUNE UNDER THE ELEVENTH AMENDMENT, ALTHOUGH HE OR SHE IS THE FINAL POLICYMAKER FOR THE COUNTY IN A PARTICULAR MATTER AT ISSUE AND STATE LAW PROVIDES NO INDICATION THAT THE STATE WOULD BEAR ANY ACTUAL OR POTENTIAL LIABILITY FOR ANY ADVERSE JUDGMENT AGAINST THE SHERIFF FOR VIOLATIONS OF §1983

Other Circuits have examined state constitutions with provisions similar to those in the Georgia Constitution and statutes and have reached a conclusion that is consistent with that of the dissents and opposite of that reached by the majority. If the majority opinion is a valid interpretation of *Hess* and *Praprotnik* in light of *McMillian*, then these circuits may have to review the issue of county liability for acts by sheriff in his or her official capacity as the policymaker for the county.

The Ninth Circuit interpreted the California Constitution and statutes in *Streit v. County of Los Angeles*, 236 F.3d 552 (9th Cir. 2001).[19] In *Streit*, the court found that:

> [Los Angeles Sheriff's Department] does not act in a law enforcement capacity when administering the County's jail release policy. The sheriffs have exclusive responsibility for running the county

[19] Ca. Const. art. IV, §18; Ca. Const. art. XI §§1(b) and 4(c); CGC §§815.2(a); 970.2; 2400; 3060; 12524; 12560; 12561; 23004; 23013; 24000; 24205; 24250; 25300; 25303; 26605; 34501; 53089.8.

> jails. Cal. Gov. Code §26605. But the counties retain the ultimate authority over the local jails through their fiscal and administrative oversight. Cal. Gov. Code §§23013, 25303. These laws establish that the relationship regarding the administration of the prisons system is between the counties and the sheriffs, not the state and the sheriffs. There are no provisions in the California Constitution or code that grant the state control over the prisons via the sheriffs. Thus, in the cases at hand, the LASD is not performing a central government function for the state when conducting the pre-release AJIS checks.

Streit, 236 F.3d at 567.

The Seventh Circuit interpreted the Illinois Constitution and statutes in *DeGenova v. Sheriff of DuPage County*, 209 F.3d 973 (7th Cir. 2000). In *DeGenova*, the court stated:

> [W]hile the Sheriff is a county officer, he may still act on some occasions on behalf of the State, Illinois statutes[20] make it clear, however, that when the Sheriff manages the jail, he is a county officer. For instance, the county maintains and furnishes the jail, 730 ILCS sec. 125/20, and bears all of the costs to maintain prisoners. 730 ILCS sec. 125/5. The county board builds the jail and provides for the Sheriffs reasonable and necessary expenses. 55 ILCS sec. 5/5-1106. And the Sheriff, as warden of the jail, must notify the county board if he decides that the jail is insufficient to secure prisoners. 730 ILCS sec. 125/12.

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[20] Ill. Const. art. VII §2; S.H.A. 55 ILCS 5/5-1106; S.H.A. 730 ILCS 125/2; S.H.A. ILCS 730 125/5; S.H.A. 730 ILCS 125/12; and S.H.A. 730 ILCS 125/20.

> The Sheriff cites provisions that require sheriffs to participate in annual training programs that a State board has approved, that authorize the State Department of Corrections to inspect the jails at least once a year, and that permit the governor to remove sheriffs who fail to protect prisoners from a lynch mob. But these provisions merely authorize the State to regulate sheriffs in a very tenuous and indirect manner, and certainly do not outweigh the Illinois Constitution, the Illinois Supreme Court, and Illinois statutory provisions that overwhelmingly designate the Sheriffs office as a local entity apart from the State.
>
> The Sheriff also argues that because we have held that Illinois sheriffs are not county employees, by default they must be agents of the State. We rejected this argument in *Franklin*, and do so again today.

DeGenova, 209 F.3d at 976.

The First Circuit has interpreted Massachusetts law[21] in *Blackburn v. Snow*, 771 F.2d 556 (1st Cir. 1985). In that case the court found:

> Here, state law expressly designates the Sheriff as the individual responsible for promulgating security policy with respect to corrections facilities. Under Mass.Gen.Laws Ann. Ch. 126, §16 (1979), "the Sheriff shall have custody and control of the jails in his county . . . of the houses of correction therein, and of all prisoners committed

[21] Mass.Gen.Laws Ann. Ch. 126 §16; Mass.Gen.Laws Ann. Ch. 127, §30; and Mass.Gen.Laws Ann. Ch. 127, §33 (1979).

> thereto, and shall keep the same himself or by his deputy as jailer, superintendent or keeper, and shall be responsible for the." Because he appointed himself superintendent of the County's jails during his tenure as Sheriff, Snow was also given statutory authority to control all visitation, M.G.L.A. ch. 127, §30, and to maintain order, id., at ch. 127, §33, at the Jail. Thus, there could hardly be a clearer case of county liability, for when an official "is the final authority or ultimate repository of county power, his official conduct and decisions must necessarily be considered those of one 'whose edicts or acts may fairly be said to represent official policy' for which the county may be held responsible."

Blackburn, 771 F.2d at 571.

In *Marchese v. Lucas,* 758 F.2d 181 (6th Cir. 1985), the Sixth Circuit interpreted Michigan law[22] to conclude:

> The Sheriff is, however, the law enforcement arm of the County and makes policy in police matters for the County. See Michigan Constitution 1963 Art. 7, Section 4. The County, through its Board of Supervisors, appropriates funds and establishes the budget for the Sheriffs Department. The Sheriff is elected by the voters of Wayne County. No doubt he is responsible for enforcing state law and presumably federal law as well. But equally clearly he is not an official of the State of Michigan or of the federal government. He is, under the Constitution of Michigan, the law enforcement officer for the County of Wayne

[22] Mich. Const. 1963 art. 7, Section 4.

> with extraordinary power to select his deputies and enforce the law.

Marchese, 758 F.2d at 188-9.

> The Fifth Circuit interpreted Mississippi law in *Brooks v. Georgia*, 84 F.3d 157, (5th Cir. 1996) and found that under Miss. Code Ann. 19-25-1 that the Sheriff is the final policy maker with regard to law enforcement within the county. The Fourth Circuit interpreted Maryland law in *Dotson v. Chester*, 937 F.2d 920, (4th Cir. 1991) to conclude that "in the proper case" the Sheriff's acts may represent the official policy of county in jail matters. 937 F.2d at 928. The Fourth Circuit also considered the North Carolina Constitution and relevant statutes in *Harter v. Vernon*, 101 F.3d 334, (4th Cir. 1996), as well as the impact of *Hess* on the issue of whether the sheriff is an arm of the state. In citing *Hess*, the court stated:
>
> The Eleventh Amendment does not exist solely in order to "preven[t] federal court judgments that must be paid out of a State's treasury . . . it also serves to avoid the indignity of subjecting a State to the coercive process of judicial tribunals. "This is certainly true, but contrary to Vernon's suggestion, this one sentence quotation of *Hess* for a black letter rule of Eleventh Amendment law does not address what entities are subject to the Eleventh Amendment, and does not overrule, or even undercut, the Court's explicit holding in Hess two years earlier.

Harter, 101 F.3d at 339.

The Fifth Circuit examined Texas law in *Turner v. Upton County, Texas*, 915 F.2d 133 (5th Cir. 1990). The court found that:

> Because of the unique structure of county government in Texas . . . elected county officials, such as the sheriff . . . hold virtually absolute sway over the particular tasks or areas of responsibility entrusted to him by state statute and is accountable to no one other than the voters for his conduct therein . . . Thus, at least in those areas in which he, alone, is the final authority or ultimate repository of county power, his official conduct and decisions must necessarily be considered those of one "whose edicts or acts may fairly be said to represent official policy" for which the county may be held responsible under section 1983.
>
> . . . Among other responsibilities he is charged with preserving the peace in his jurisdiction and arresting all offenders. Tex. Code Crim. P. arts. 2.13, 2.17. As the county's final policymaker in this area, he has been empowered by the state to "define objectives and choose the means of achieving them" without county supervision.

Turner, 915 F.2d at 136 (citations omitted).

In each Circuit referred to here, the courts have considered state constitutions, statutes, and traditions to formulate the premise that the authority of the sheriff follows from the state either directly to the sheriff or through the county. If the majority position were adopted as a fair reading of *McMillian*, each of these Circuits would have to re-examine the relevant state law. If, after a re-examination it was determined that the authority at issue came directly from the state, regardless of how it would be employed by the sheriff in his or her official capacity, or a deputy operating under the sheriff's authority, the act would by definition "heavily involve" the state.

By that fact alone, there would be a basis to find that the entity for whom the sheriff acted should receive immunity under the Eleventh Amendment, regardless of the identity of that entity. Such a result would render moot the Court's ruling in *Hess, Pennhurst,* and *Praprotnik.*

III. THIS CASE RAISES ISSUES AS TO THE CONTINUED VIABILITY OF §1983 AS A REMEDY IN CASES INVOLVING COUNTY SHERIFFS

This case raises the issue of whether, if this majority opinion is adopted by the other circuits, §1983 will remain viable. If a county sheriff cannot be sued in federal court in his official capacity for excessive use of force by deputies in the county jail against pre-trial detainees in states such as Georgia with state tort claims acts that preclude suits against state officials for assault or battery, victims of such acts will be without any remedy, as would the victim in this case.

This Court has not decided that a suit against a sheriff in his or her official capacity for conduct as a final policy maker would be immune under the Eleventh Amendment without evidence that the state treasury, or the sovereignty of the state, would be affected by an adverse judgment. Nor has the Court decided that the use of force by a sheriff in his official capacity, or a deputy operating under the direction of the sheriff, in a jail or anywhere in the county in support of any function, is an act by an arm of the State.

Mistreatment of inmates in county jails is one of the most egregious categories of excess that §1983 was enacted to address. The only alternative to that §1983 claim available to a plaintiff would be to bring suit against the sheriff in his individual capacity in the state court with a

jury selected from the voters of the county who elected him or her in the first instance.[23] As the court stated: "[o]f particular applicability to our instant case is the Court's description of the third aim of §1983 which was 'to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice.'" *Marchese v. Lucas,* 758 F.2d 181, 186 (6th Cir. 1985), quoting, *Monroe v. Pape*, 365 U.S. 167, 174 (1961). The majority opinion provides an interpretation of *McMillian* that would provide a remedy in theory but not in practice and is contrary to the Court's view that coverage of §1983 must be broadly construed. *Dennis v. Higgins, Nebraska*, 498 U.S. 439 (1991). It would also eliminate any consideration of whether the state's sovereignty would be affected or its treasury would be liable for the judgment as an important condition precedent to finding immunity under the Eleventh Amendment, as mandated by *Hess v. Port Authority Trans-Hudson Corporation*, 519 U.S. 30 (1994).

[23] That option is not available in this case. The district court dismissed the claims against the sheriff in his individual capacity and the Eleventh Circuit has decided that the county is entitled to Eleventh Amendment immunity for claims brought against a sheriff under §1983 in his or her official capacity. *Grech v. Clayton County*, 335 F.3d 1326 (11th Cir. 2003).

CONCLUSION

For the foregoing reasons, and on the basis of the authorities cited, a writ of certiorari should issue to review the decision of the Eleventh Circuit in this case.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-13606

D.C. Docket No. 99-00042-CV-WLS

WILLIE SANTONIO MANDERS,

Plaintiff-Appellee,

versus

THURMAN LEE, individually and as employee of the City of Homerville, ALAN BROWN, individually and as employee of the City of Homerville, BART CREWS, individually and as employee of the City of Homerville, CITY OF HOMERVILLE, CLINCH COUNTY, GEORGIA,

Defendants,

WINSTON PETERSON, individually and as employee of Clinch County, Georgia,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Georgia

(Filed July 28, 2003)

Before EDMONDSON, Chief Judge, TJOFLAT, ANDERSON, BIRCH, DUBINA, BLACK, CARNES, BARKETT, HULL, MARCUS and WILSON, Circuit Judges.

HULL, Circuit Judge:

In this § 1983 excessive force case, Willie Santonio Manders sued Sheriff Winston Peterson in his official capacity for injuries allegedly caused by the Sheriff's use-of-force policy at the jail and failure to train and discipline his deputies in that regard. We conclude that Sheriff Peterson functions as an "arm of the State" in establishing use-of-force policy at the jail and in training and disciplining his deputies in that regard, and is entitled to Eleventh Amendment immunity for these particular functions. Thus, we reverse the district court's denial of summary judgment for Sheriff Peterson.

I. BACKGROUND

A. Facts

As the elected sheriff, defendant Sheriff Peterson is responsible for the operation of the jail in Clinch County, Georgia, for establishing use-of-force policy at the jail, and for hiring, training, and disciplining his deputies who work in the jail. Sheriff Peterson's deputy and chief jailer is Alan Brown. In May 1997, police officers from the City of Homerville arrested plaintiff Manders and transported him to the jail.[1] Because Manders had punched a police

[1] We recount the evidence in the light most favorable to Manders, the nonmoving party, on a summary judgment motion. *Harbert Int'l, Inc. v. James*, 157 F.3d 1271, 1277 (11th Cir. 1998).

officer, the arresting officers charged him with felony obstruction of an officer, in violation of Georgia law, O.C.G.A. § 16-10-24(b).

As Manders was escorted into the jail's holding cell, a City police officer stated that Manders "hit him" earlier. According to Manders, Deputy Brown and a City police officer then repeatedly struck him across the head, neck, and face and banged his head against a wall. Manders suffered a bruised, swollen face. The beating affected him emotionally, resulting in a mental hospital stay.

The morning after the beating, Manders wrote a statement for jail officials, wherein he stated: "They had to be rough with me to let me know that they mean business." That same day, Manders was released from jail. Afterwards, Manders's mother met with Sheriff Peterson to discuss the beating. According to Manders's mother, Sheriff Peterson responded to her concerns this way: "[T]hat happens sometimes when they bite and scratch." Sheriff Peterson did not investigate the beating incident. In his deposition, Manders later testified that Sheriff Peterson and another officer forced him to write his statement.

Manders's evidence also included the Policy and Procedure Manual (the "Manual") of the Sheriff's Office containing the Sheriff's use-of-force policy. Sheriff Peterson published the Manual in 1989 or 1990, drafting some policies himself and adopting some State policies. The

Manual requires that "[e]ach case involving physical or defensive force be reported in writing to the Sheriff:"[2]

> (A) Notification of Supervisor
>
> 1. The Sheriff shall be immediately informed of each incident involving the use of force by officers of this Department. Such notification shall be on the same date of the incident.
>
> 2. Each case involving physical or defensive force shall be reported in writing to the Sheriff.
>
> 3. Each officer present or assisting in an arrest or incident requiring force shall be prepared to submit a report supplement describing the incident if requested.

In addition to the report requirement, the Manual discusses both non-deadly and deadly force by an officer in the performance of his duties. The Manual provides that non-deadly force may be used by an officer in these situations:

> 1. When necessary to preserve the peace, prevent commission of offenses, or prevent suicide or self-inflicted injury.
>
> 2. When preventing or interrupting a crime or attempted crime against property.

---

[2] Deputy Brown never submitted a written report indicating he used force with Manders. Sheriff Peterson never required Brown to do so even after having met with Manders's mother.

3. When making lawful arrests and searches, overcoming resistance to such arrest and searches, and preventing escapes from custody.

4. When in self defense, or defense of another against unlawful violence to his person.

The Manual also details when deadly force is justified. Sheriff Peterson has no other written or standard operating procedures for the use of force at the jail.

B. Amended Complaint

In this § 1983 case, Manders's amended complaint claims that defendants Clinch County and Sheriff Peterson, in his official capacity, are responsible for use-of-force policy at the jail, for training and disciplining deputies who work at the jail, and for ensuring that the policy is followed.[3] According to Manders, Deputy Brown beat him, and Clinch County and Sheriff Peterson permitted Brown's use of excessive force at the jail. Manders also asserts that Clinch County and Sheriff Peterson failed to provide deputies proper training and supervision regarding use of force at the jail and failed to promulgate adequate rules to regulate deputies' conduct at the jail.

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[3] The parties and the district court litigated this lawsuit against Sheriff Peterson as if all of Manders's § 1983 claims against Clinch County also were made against Sheriff Peterson in his official capacity. Thus, we decide the case as one in which the amended complaint purports to sue Sheriff Peterson in his official capacity for use-of-force policy and for failing to train and discipline Deputy Brown in that regard. *See Marsh v. Butler County*, 268 F.3d 1014, 1023-24 n.4 (11th Cir. 2001) (*en banc*).

Manders asserts that these failures caused his beating. Manders sought damages against Clinch County and Sheriff Peterson in his official capacity.[4]

The district court denied defendants' motion for summary judgment on Manders's § 1983 damage claims against Clinch County and Sheriff Peterson in his official capacity for the use-of-force policy at the jail and the training and disciplining of deputies in that regard.[5] Sheriff Peterson alone filed this interlocutory appeal, claiming that he is a state actor and that the district court erred in denying him Eleventh Amendment immunity.[6] This appeal does not address the *individual* liability of

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[4] At no time has Manders made a claim against Sheriff Peterson's official bond, which Georgia law requires sheriffs to post, O.C.G.A. § 15-16-5, and we do not address such a claim.

[5] The district court granted summary judgment (1) to Sheriff Peterson individually on all claims, (2) to Clinch County and Sheriff Peterson in his official capacity on Manders's § 1983 claim for the negligent hiring of Deputy Brown, and (3) to Clinch County and Sheriff Peterson on Manders's injunctive relief claims. Manders did not appeal or cross-appeal these rulings.

[6] Although Clinch County also asserts that Sheriff Peterson acts for the State and is not a county policymaker, Clinch County did not appeal because it could not at this time. When a county appeals asserting that a sheriff is not a county policymaker under § 1983, that presents a defense to liability issue for the county over which we do not have interlocutory jurisdiction. *Swint v. Chambers County Comm'n,* 514 U.S. 35, 43 (1995). In contrast, when a sheriff in his official capacity appeals interlocutorily asserting Eleventh Amendment immunity, this presents a threshold immunity-from-suit issue over which we have jurisdiction. *See P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.,* 506 U.S. 139, 147 (1993); *Swint,* 514 U.S. at 42-43; *Grech v. Clayton County,* ___ F.3d ___ (11th Cir. 2003) (*en banc*).

Sheriff Peterson or his deputies for using excessive force.[7] Instead, this appeal involves only the immunity of Sheriff Peterson in his *official* capacity.

II. THE ELEVENTH AMENDMENT

A. Immunity from Suit in Federal Court

The Eleventh Amendment provides immunity by restricting federal courts' judicial power:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. amend. XI. The Eleventh Amendment protects a State from being sued in federal court without the State's consent.[8] As a result, parties with claims

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[7] It is argued that the majority opinion "badly subverts the law," makes sheriffs "immune from suit," and renders a "substantial blow" to citizens being able to hold officials accountable for constitutional violations. (Dissent, Barkett, J., pp. 56, 88). As noted above, this case involves only the sheriff "*in his official capacity*" and does not affect in any way claims against sheriffs or their deputies in their individual capacities. *See Hafer v. Melo,* 502 U.S. 21, 30-31 (1991) ("[T]he Eleventh Amendment does not erect a barrier against suits to impose 'individual and personal liability' on state officials under § 1983."); *Hobbs v. Roberts,* 999 F.2d 1526, 1528 (11th Cir. 1993) (noting that Eleventh Amendment immunity does not extend to " 'individual' or 'personal' capacity suits in federal court"); *Gamble v. Fla. Dep't of Health & Rehabilitative Servs.,* 779 F.2d 1509, 1512-13 (11th Cir. 1986) ("[T]he Eleventh Amendment provides no bar to federal court adjudication of suits against state officers individually.").

[8] "Although the express language of the [Eleventh] [A]mendment does not bar suits against a state by its own citizens, the Supreme

(Continued on following page)

against a non-consenting State must resort to the State's own courts. The Eleventh Amendment is "a recognition that states, though part of a union, retain attributes of sovereignty, including immunity from being compelled to appear in the courts of another sovereign against their will." *McClendon v. Georgia Dep't of Cmty. Health,* 261 F.3d 1252, 1256 (11th Cir. 2001).

It is also well-settled that Eleventh Amendment immunity bars suits brought in federal court when the State itself is sued and when an "arm of the State" is sued. *See Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle,* 429 U.S. 274, 280 (1977). To receive Eleventh Amendment immunity, a defendant need not be labeled a "state officer" or "state official," but instead need only be acting as an "arm of the State," which includes agents and instrumentalities of the State. *See Regents of the Univ. of Cal. v. Doe,* 519 U.S. 425, 429-30 (1997). Whether a defendant is an "arm of the State" must be assessed in light of the particular function in which the defendant was engaged when taking the actions out of which liability is asserted to arise. *See Shands Teaching Hosp. & Clinics v. Beech St. Corp.,* 208 F.3d 1308, 1311 (11th Cir. 2000) ("The pertinent inquiry is not into the nature of [an entity's] status in the abstract, but its function or role in a particular context."). The particular functions at issue are Sheriff Peterson's

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Court has held that an unconsenting state is immune from lawsuits brought in federal court by the state's own citizens." *Carr v. City of Florence,* 916 F.2d 1521, 1524 (11th Cir. 1990) (citing *Hans v. Louisiana,* 134 U.S. 1 (1890)). "[I]n the absence of consent[,] a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment." *Pennhurst State Sch. & Hosp. v. Halderman,* 465 U.S. 89, 100 (1984).

force policy at the jail and the training and disciplining of his deputies in that regard.[9]

B. Eleventh Amendment Factors

In Eleventh Amendment cases, this Court uses four factors to determine whether an entity is an "arm of the State" in carrying out a particular function: (1) how state law defines the entity; (2) what degree of control the State maintains over the entity; (3) where the entity derives its funds; and (4) who is responsible for judgments against the entity. *Miccosukee Tribe of Indians of Fla. v. Fla. State Athletic Comm.*, 226 F.3d 1226, 1231-34 (11th Cir. 2000); *Shands*, 208 F.3d at 1311; *Tuveson v. Fla. Governor's*

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[9] *See Tuveson v. Fla. Governor's Council of Indian Affairs, Inc.*, 734 F.2d 730, 734 (11th Cir. 1984) (noting "the functions of the Council" are significant to Eleventh Amendment analysis); *cf. McMillian v. Monroe County*, 520 U.S. 781, 785-86 (1997) (instructing that the question is not whether the sheriff acts for the county or state "in some categorical, 'all or nothing' manner [;]" rather the question of whether the sheriff acts for the county or state requires attention to the sheriff's role "in a particular area, or on a particular issue"); *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 45 (1994) (noting "Port Authority functions are not readily classified as typically state or unquestionably local").

Although the majority opinion focuses only on the particular function of Sheriff Peterson in establishing force policy at the jail and training and disciplining his deputies, the dissent criticizes this functional approach and defines the Sheriff's conduct at a higher level of abstraction with "jail operation as the pertinent function." (Dissent, Barkett, J., p. 65). We disagree because the dissent's characterization of the function at issue is too broad; the relevant question is not whether Sheriff Peterson acts for the State or Clinch County in some categorical all or nothing manner in connection with the county jail. Instead, the proper inquiry is whether Sheriff Peterson acts for the State or Clinch County in the particular functions at issue today.

Council of Indian Affairs, Inc., 734 F.2d 730, 732 (11th Cir. 1984).

Given these factors, the resolution of the Eleventh Amendment issue in this case depends, in part, on state law. Therefore, before applying the four-factor test, we must examine Georgia law and the relationship among Sheriff Peterson, the State, and Clinch County. The issue of whether an entity is an "arm of the State" for Eleventh Amendment purposes is ultimately a question of federal law. But the federal question can be answered only after considering provisions of state law. Thus, we now journey through Georgia's legal terrain at some length.[10]

III. GEORGIA LAW

We first examine the governmental structure of Sheriff Peterson's office vis-a-vis the State and Clinch County under Georgia law. Next, we outline the functions Sheriff Peterson performs as they reflect the character of his office. Then we apply the Eleventh Amendment factors to the sheriff's functions in issue: promulgating force

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[10] We focus on Georgia law, as opposed to how other circuits treat sheriffs under other states' laws, because states have extremely wide latitude in determining their forms of government and how state functions are performed, and because significant for our case is how the Georgia Supreme Court has treated sheriffs in Georgia and interpreted the provisions of Georgia law in issue. *See Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429 n.5 (1997) (noting that the Eleventh Amendment question "can be answered only after considering the provisions of state law that define the agency's character"); *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977) (stating that whether an entity is entitled to Eleventh Amendment immunity "depends, at least in part, upon the nature of the entity created by state law").

policy and training and disciplining deputies in that regard.

A. Georgia's Governmental Structure

Georgia's Constitution has created the sheriff's office as an elected constitutional office in Georgia's governmental hierarchy. Ga. Const. art. IX, § 1, ¶ 1. The sheriff's office is not a division or subunit of Clinch County or its county governing body, and, thus, it is not a structural part of Clinch County government. *See id.;* Ga. Const. art. IX, § 2, ¶ 1(c)(1). Rather, the sheriff's office is a separate constitutional office independent from Clinch County and its governing body. *See* Ga. Const. art. IX, § 2, ¶ 1(c)(1).

Further, Georgia's Constitution grants the State legislature the exclusive authority to establish and to control a sheriff's powers and duties. Ga. Const. art. IX, § 1, ¶ 3(a)-(b).[11] Interpreting this constitutional provision, the Georgia Supreme Court has explained that sheriffs are subject to the control of the Georgia legislature and are *not* county employees. *Bd. of Comm'rs of Randolph County v.*

[11] Georgia's Constitution provides that sheriffs "shall be elected by the qualified voters of their respective counties for terms of four years and shall have such qualifications, powers, and duties as provided by general law." Ga. Const. art. IX, § 1, ¶ 3(a). That paragraph also provides that the "[c]ounty officers . . . may be on a fee basis, salary basis, or fee basis supplemented by salary," but that "[m]inimum compensation for said county officers may be established by the General Assembly by general law" and supplemented by local law or "if such authority is delegated by local law, by action of the county governing authority." Ga. Const. art. IX, § 1, ¶ 3(b); *see infra* note 12. The State legislature thus also controls sheriffs' qualifications and minimum salary.

Wilson, 260 Ga. 482, 482 (1990) ("The sheriff . . . is an elected, constitutional officer; he is subject to the charge of the General Assembly and is not an employee of the county commission."); *see Chaffin v. Calhoun,* 262 Ga. 202, 203 (1992); *Warren v. Walton,* 231 Ga. 495, 499-500 (1973).

In contrast to the State's authority and control over sheriffs, Georgia's Constitution grants counties no legislative power or authority over sheriffs and expressly prevents counties from controlling or affecting the sheriff's office or the personnel thereof.[12] Ga. Const. art. IX, § 2, ¶ 1(c)(1). In this regard, the Georgia Supreme Court has concluded that this constitutional restriction on the legislative power granted to counties-home rule-prevents counties from taking action affecting the sheriff's office. *Warren,* 231 Ga. at 499;[13] *see Stephenson v. Bd. of Comm'rs of Cobb County,* 261 Ga. 399, 401-02 (1991). As a result, counties exercise no authority or control over the sheriff's

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[12] Georgia's Constitution provides that the legislative "power granted to counties . . . shall not be construed to extend to . . . [a]ction affecting any elective county office, the salaries thereof, or the personnel thereof, except the personnel subject to the jurisdiction of the county governing authority." Ga. Const. art. IX, § 2, ¶ 1(c)(1). The Georgia Attorney General has stated that, under Georgia's Constitution, county governing authorities lack even the authority to supplement the sheriff's salary "unless authorized by local law enacted by the General Assembly to supplement the salary." Ga. Op. Atty. Gen. No. U97-19 (1997); *see infra* note 36.

[13] Although *Warren* involved a prior version of the Georgia Constitution, the same relevant language is in the current version of the Georgia Constitution. *See Warren,* 231 Ga. at 499. The plain language of Georgia's Constitution makes the powers and duties of the constitutional sheriff's office alterable by the Georgia legislature and unalterable by the county or its governing body.

force policy, whether in making arrests on the streets or in quelling disruptive inmates at the jail.

Further, in Georgia, counties also do not delegate any of their governmental or police powers to sheriffs. Instead, the sheriffs' authority and duties are derived directly from the State. That counties delegate no power or authority to sheriffs further explains why counties have no authority or control over them and why the sheriff is not a subunit or division of county government.

Georgia law likewise makes the county entity itself, here Clinch County, a separate entity independent of the sheriff's office. Under Georgia law, Clinch County is a "body corporate" capable of suing and being sued and is headed by the county governing authority. Ga. Const. art. IX, § 1, ¶ 1 ("Each county shall be a body corporate and politic with such governing authority . . . as provided by law."); O.C.G.A. §§ 36-1-3 ("Every county is a body corporate, with power to sue or be sued in any court."), 1-3-3(7) (defining "County governing authority" as "the board of county commissioners, the sole county commissioner, or the governing authority of a consolidated government"). As a separate entity, Clinch County is headed by its Board of Commissioners, which is given "exclusive jurisdiction over and control of county affairs." Ga. Laws 1933, p. 467, § 29. In contrast, under Georgia's Constitution, the State has exclusive authority and control over the duties and affairs of the sheriff's office. Although the State requires the county to fund the sheriff's budget, Georgia's Constitution precludes the county from exercising any authority over the sheriff, including how the sheriff spends that budget. Ga. Const. art. IX, § 2, ¶ 1(c)(1); *Chaffin v. Calhoun,* 262 Ga. 202, 203-04 (1992); *see Boswell v. Bramlett,* 274 Ga. 50, 52 (2001).

The separate and distinct nature of Sheriff Peterson's office and Clinch County, and their independence from each other, are further demonstrated by how Georgia law treats sheriffs' employees. Sheriffs alone hire and fire their deputies. *See* O.C.G.A. § 15-16-23. Deputies, including those serving as jailers, are employees of the sheriff and not the county. *Warren,* 231 Ga. at 499 (recognizing that "[d]eputy sheriffs and deputy jailors are employees of the sheriff, whom the sheriffs alone are entitled to appoint or discharge") (quotation marks omitted); *Drost v. Robinson,* 194 Ga. 703, 710 (1942); *Brown v. Jackson,* 221 Ga. App. 200, 201 (1996) (noting deputy sheriffs "were employees of the sheriff and not Peach County"); *Wayne County v. Herrin,* 210 Ga. App. 747, 751 (1993); *Pettus v. Smith,* 174 Ga. App. 587, 588 (1985); *see Boswell,* 274 Ga. at 51 ("[E]mployees of constitutionally elected officers of a county are considered employees of the elected officer and not employees of the county, as represented by the local governing authority."); *Mobley v. Polk County,* 242 Ga. 798, 801-02 (1979).[14]

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[14] This case involves the acts of Deputy Sheriff Brown, who served as Sheriff Peterson's chief jailer. Sheriffs may assign their deputy sheriffs to work at the jail. *See* O.C.G.A. § 15-16-23; *Wayne County v. Herrin,* 210 Ga. App. 747, 751 (1993); *Kendrick v. Adamson,* 51 Ga. App. 402 (1935). In *Wayne County,* the Georgia court read the sheriff's power to hire and fire deputy sheriffs under O.C.G.A. § 15-16-23, together with O.C.G.A. § 36-1-21, to mean that the sheriff may appoint his deputies "at will," but also may elect in writing to make their appointments subject to the county civil service system as prescribed by law in O.C.G.A. § 36-1-21. *Wayne County,* 210 Ga. App. at 752-53; *see Brett v. Jefferson County,* 123 F.3d 1429, 1434 (11th Cir. 1997) (stating deputy sheriffs in Georgia are at-will employees of the sheriff and concluding sheriff had failed to satisfy the statutory requirements in O.C.G.A. § 36-1-21 necessary for the sheriff to place his employees under the county

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Because sheriffs are elected by county voters, it is not surprising that Georgia's Constitution labels sheriffs as "county officers." Ga. Const. art. IX, § 1, ¶ 3(a). But, given how Georgia's Constitution also makes the sheriff's office a constitutional office independent from the county entity itself, precludes all county control, and grants only the State control over sheriffs, this "county officer" nomenclature necessarily reflects a geographic label defining the territory in which a sheriff is elected and mainly operates. It is entirely consistent for sheriffs to be independent of the county government and to be subject to State, not county, control but to be called "county officers" to reflect their geographic jurisdiction in the State.

Having established that Sheriff Peterson's office is independent from Clinch County and its governing authority and that only the State controls and grants powers and duties to sheriffs, we next examine the functions of the sheriff's office under Georgia law. The specific tasks that sheriffs perform also shed considerable light on the character of the sheriff's office under Georgia law.

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civil service system). Sheriffs also may appoint persons to serve as jailers who are not deputy sheriffs. *See Tate v. Nat'l Sur. Corp.*, 58 Ga. App. 874, 876 (1938) (noting "[t]here was no evidence that the jailer was also a deputy"). O.C.G.A. § 42-4-1 provides: "By virtue of their offices, sheriffs are jailers of the counties and have the authority to appoint other jailers, subject to the supervision of the county governing authority, as prescribed by law." We likewise read O.C.G.A. §§ 42-4-1 and 36-1-21 together to mean that the sheriff may appoint his non-deputy jailers "at will" under O.C.G.A. § 42-4-1, but also may elect in writing to make their appointment subject to the county civil service system and thereby subject to county supervision as prescribed by law in O.C.G.A. § 36-1-21. In any event, this case does not involve a jailer who is not a deputy sheriff.

B. Sheriff's Functions

As noted above, counties cannot, and do not, grant any law enforcement power to sheriffs and do not assign or control any of the sheriffs' duties. Instead, the State alone has delegated to sheriffs specific duties in three main areas: (a) law enforcement; (b) state courts; and (c) corrections. While we ultimately decide today only whether Georgia sheriffs wear a "state hat" in prescribing use-of-force policy, we outline the duties the State has assigned to sheriffs as they reflect the character of the sheriff's office under Georgia law. What duties the State assigns sheriffs is indicia of how the State defines that entity.

1. Law Enforcement

In Georgia, the office of sheriff is as old as the State of Georgia itself and carries with it the common law duties of sheriffs to enforce the laws and preserve the peace on behalf of the sovereign State, as well as other specific statutory duties imposed by the State legislature. O.C.G.A. § 15-16-10(a)(1)-(8); *Hannah v. State,* 212 Ga. 313 (1956) ("The office of sheriff carries with it . . . all of its common-law duties and powers, except as modified by statute.") (citation and quotation marks omitted).[15] Given

[15] The Georgia Attorney General also has explained that under Georgia law, sheriffs have statutory duties and also all of their common law duties and powers unless modified by statute, and that these duties include enforcing the laws and conserving the peace. *See* Ga. Op. Atty. Gen. No. 77-83 (1977); Ga. Op. Atty. Gen. No. U69-385 (1969) (both construing former Georgia Code § 24-2813 (1933), now O.C.G.A. § 15-16-10). In addition, sheriffs must be state-certified peace officers, who are "vested . . . with authority to enforce the criminal or traffic laws through the power of arrest and [are charged with the] preservation of

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the sheriff's continuing common law duties, the State legislature mandates that it is the express duty of the sheriff to perform not only "such . . . duties as are or may be imposed by law," but also those duties "which necessarily appertain to his or her office." O.C.G.A. § 15-16-10(a)(8).

Georgia's Constitution also provides that "[t]he Governor shall take care that the laws are faithfully executed and shall be the conservator of the peace throughout the state." Ga. Const. art. V, § 2, ¶ 2. In enforcing the laws and conserving the peace, the Georgia Governor does not act alone, but necessarily acts through state agents, which include sheriffs for certain state functions.[16] The United States Supreme Court recently acknowledged that sheriffs historically had geographic restrictions but in reality "represented the State in fulfilling [their] duty to keep the peace." *McMillian v. Monroe County,* 520 U.S. 781, 793 (1997) (concluding that Alabama sheriffs act for the state as to the law enforcement function in issue). The Supreme Court reflected on the longstanding historical role of sheriffs, as follows:

> As the basic forms of English government were transplanted in [the United States], it also became the common understanding here that the sheriff, though limited in jurisdiction to his county and generally elected by county voters,

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public order, the protection of life and property, and the prevention, detection, or investigation of crime." O.C.G.A. § 35-8-2(8)(A).

[16] Other state actors available for law enforcement activity include the Georgia Bureau of Investigation and the Georgia State Patrol. *See* O.C.G.A. §§ 35-3-3 *et seq.*; § 35-2-30 *et seq.*

> was in reality an officer of the State, and ultimately represented the State in fulfilling his duty to keep the peace.

Id. at 794 (internal footnote omitted). Indeed, "in conserving the public peace, in vindicating the law, and in preserving the rights of the government, [the sheriff] represents the sovereignty of the State and he has no superior in his county." 1 W. Anderson, A Treatise on the Law of Sheriffs, Coroners and Constables 5 (1941), *cited with approval in McMillian,* 520 U.S. at 794.

As we already have noted, sheriffs in Georgia derive their power and duties from the State, are controlled by the State, and counties cannot, and do not, delegate any law enforcement power or duties to sheriffs.[17] In Georgia, this historical role of the sheriff thus continues to this day as the sheriff directly represents the sovereignty of the State, has no superior in his county, and performs state functions for the sovereign in enforcing the laws and keeping the peace.

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[17] While the State fulfills part of its policing functions through the sheriff's office, the Georgia legislature authorizes the county to fulfill policing functions through a county police force. County governing bodies may create "a county police force" through a resolution or ordinance of the particular county governing body followed by the approval of qualified county electors. O.C.G.A. § 36-8-1(b). Thus, a county-wide referendum is required before a county may create a county police force. *Id.* If the referendum passes, the county governing body controls the hiring and removal of its county police, including the county police chief, and may "abolish a county police force at any time." O.C.G.A. § 36-8-2. County police officers are subject to the "direction and control of the county governing body." O.C.G.A. § 36-8-5.

It is also entirely consistent for Georgia sheriffs to be elected by county voters and be called "county officers" to reflect their geographic jurisdiction, but for them still to act on behalf of the State in enforcing the laws and keeping the peace in that jurisdiction. *See* R. Cooley, Handbook on the Law of Municipal Corporations 512 (1914) ("Sheriffs . . . clerks and other so-called county officers are properly state officers for the county. Their functions and duties pertain chiefly to the affairs of state in the county.").[18]

2. State Courts

In addition to imposing certain law enforcement duties, the State has assigned sheriffs specific duties in the State's superior courts.[19] Superior courts are the State's trial courts of general jurisdiction. *See* Ga. Const. art. VI, § 4, ¶ 1; O.C.G.A. § 15-6-8.[20] That sheriffs perform

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[18] For example, the State has assigned sheriffs the task of maintaining and entering warrant information into the statewide criminal information database. O.C.G.A. § 35-3-36; *see Grech v. Clayton County*, ___ F.3d ___ (11th Cir. 2003) (*en banc*) (concluding "as to the particular function at issue [entry and maintenance of warrant information], the sheriff is acting on behalf of the State and thus . . . Clayton County is not liable [for the sheriff's conduct at issue]").

[19] Throughout this opinion, the term "state courts" refers only to Georgia's superior courts, which have exclusive jurisdiction over state felony cases, divorce cases, cases respecting title to land, and cases arising in equity. Ga. Const. art. VI, § 4, ¶ 1. Georgia's superior courts also have concurrent jurisdiction over misdemeanors and other civil cases. Ga. Const. art. VI, § 4, ¶ 1; O.C.G.A. §§ 15-6-8(1); 15-7-4.

[20] Just as county jails house state criminal offenders, county courthouses, funded and built by the county, house state superior courts and their judges. O.C.G.A. § 15-6-24. Although presiding in county courthouses, superior court judges perform state judicial functions.

an integral role in the state judicial system is further indicia of how sheriffs act for the State.

The State mandates that sheriffs must attend "all sessions" of superior courts in their respective counties and "never . . . leave [court] without the presence of himself or his deputy." O.C.G.A. § 15-16-10(a)(2). The State also mandates that sheriffs must execute and return the processes and orders of the state courts. O.C.G.A. § 15-16-10(a)(1). Sheriffs also must publish sales, citations, and other proceedings as required by law, keep an execution docket, keep a book of all sales made by process of state courts, and keep many other specified records. O.C.G.A. § 15-16-10(a)(4)-(6). This same statute provides that "[i]f any sheriff or deputy fails to comply with any provision of [O.C.G.A. § 15-16-10(a)], he shall be fined for a contempt." O.C.G.A. § 15-16-10(b). Thus, the State directs sheriffs to enforce state court orders and punishes them if they do not. The superior court clerk also delivers to the sheriff or his deputy a "precept containing the names of the persons drawn as grand jurors," and the sheriff or his deputy serves the summons on each grand juror in person or by mailing, as determined by the sheriff. O.C.G.A. § 15-12-65.[21]

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[21] Superior court judges "are authorized and empowered to transfer the investigation by a grand jury from the county where the crime was committed to the grand jury in any other county in the State" in certain circumstances. O.C.G.A. § 15-12-82(a). When this transfer occurs, "[t]he sheriff and the clerk of the superior court of the county in which the crime was committed shall be qualified and authorized to perform the duties of such officers in the same manner as if there had been no change of venue." O.C.G.A. § 15-12-82(d).

The State also has assigned sheriffs the function of determining which companies may make bonds in their jurisdictions. O.C.G.A. § 17-6-15. While state judges decide whether a county jail inmate, charged with a felony, is entitled to bond, sheriffs approve bonding companies in their counties for the State's criminal cases. Sheriffs must "publish and make available written rules and regulations defining acceptable sureties and prescribing under what conditions sureties may be accepted." O.C.G.A. § 17-6-15(b)(1). The State also prescribes the qualifications of "professional bondspersons." O.C.G.A. § 17-6-50. The State in effect "places the authority to accept sureties in felony cases in the office of the sheriff and not in the superior court."[22] *Jarvis v. J&J Bonding Co.*, 239 Ga. 213, 215 (1977) (construing Georgia Code § 27-418 (1933), which is the precursor to O.C.G.A. § 17-6-15).

The State also requires sheriffs to "deposit cash bonds held by the sheriff in one or more interest-bearing trust accounts," O.C.G.A. § 15-16-27(a), and to remit that interest to a state agency, the Georgia Indigent Defense Council. O.C.G.A. §§ 15-16-27(b); 17-12-32. That Council then redistributes the money to local indigent defense programs. O.C.G.A. §§ 15-16-27(b); 17-12-30 *et seq.*[23]

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[22] In criminal cases, state courts may require witnesses to post bonds to ensure their appearance, O.C.G.A. § 17-7-26, and the sheriff is responsible for accepting bonds and ensuring that they come from a bonding company approved by the sheriff. O.C.G.A. § 17-7-27.

[23] On May 22, 2003, the Governor signed the Georgia Indigent Defense Act of 2003 ("the Act"), which amends O.C.G.A. Chapter 17-12 and O.C.G.A. § 15-16-27. H.B. 770, 147th Gen. Assem., Reg. Sess. (Ga.2003). The Act does not change the requirement in O.C.G.A. § 15-16-27(a) that sheriffs "deposit cash bonds held by the sheriff in one or

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These state court and bond-related duties do not stem from laws of general application, but from statutes whereby the State requires sheriffs to perform specific tasks that are state functions in the State's criminal justice system. These statutes are not mere general regulatory control. Instead, they represent the State delegating discrete state functions in the State's criminal justice system specifically to sheriffs.

3. Corrections

The State also assigns sheriffs specific corrections duties regarding state offenders. The State requires that the sheriff take custody of all inmates in the jail in his county. O.C.G.A. § 42-4-4. The Georgia legislature mandates that "[i]t shall be the duty of the sheriff . . . [t]o take from the outgoing sheriff custody of the jail and the bodies of such persons as are confined therein" and to furnish inmates "medical aid, heat, and blankets, to be reimbursed if necessary from the county treasury." O.C.G.A. § 42-4-4(a)(1)-(2). Sheriff Peterson's authority and duty to administer the jail in his jurisdiction flows from the State, not Clinch County. *See In re Irvin,* 254 Ga. 251, 253 (1985) ("It is clear that the legislature has vested broad authority in the office of sheriff to administer the jails."). Sheriffs who refuse to take custody of an inmate may be charged with a misdemeanor. O.C.G.A. § 42-4-12.

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more interest-bearing trust accounts." However, pursuant to the amended § 15-16-27(b), effective December 31, 2003, sheriffs must remit the interest to the Georgia Public Defender Standards Council, a state agency, for distribution to the circuit public defender offices instead of to the Georgia Indigent Defense Council.

It is important to outline how the State uses county jails to incarcerate its state offenders and, in turn, requires sheriffs to administer them. To begin with, sheriffs must take custody of inmates arrested and awaiting trial in state superior courts on *state* felony and misdemeanor charges.[24] No sheriff's approval is required. For example, a City of Homerville police officer arrested plaintiff Manders for felony obstruction of an officer – in violation of state law, O.C.G.A. § 16-10-24(b) – and took Manders to the Clinch County jail.

As custodians of pre-trial detainees charged with state felonies, sheriffs transfer inmates to and from the State's superior courts for pre-trial and trial proceedings, as well as attend all sessions of those courts. If a change of venue for the trial is granted by the state trial judge, the sheriff must transport the person to the county to which the change of venue is directed and deliver that person to the sheriff of that county. O.C.G.A. § 42-4-11.

Another class of inmates in the county jails are those serving state sentences for felonies. When convicted of a felony offense, the felon by operation of Georgia law is committed to the custody of the Georgia Department of Corrections ("DOC"), which determines the place of confinement. O.C.G.A. §§ 42-5-50(b); 42-5-51(b).[25] In at least

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[24] *See Howington v. Wilson,* 213 Ga. 664, 665 (1957) ("It is apparent from [Georgia] statutes that the custody of a defendant, pending his trial under an indictment for a criminal offense, is in the sheriff of the county wherein the offense was committed. . . ."); *State v. Middlebrooks,* 236 Ga. 52, 52-53 (1976) (defendant originally detained in City of Atlanta jail transferred to custody of the Fulton County Sheriff upon indictment).

[25] The state superior court has no authority to sentence a person convicted of a felony other than to the custody of the commissioner of

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five situations, convicted felons serve their *state* sentences in county jails.

First, a convicted felon, although in DOC custody, serves his state felony sentence in the county jail pending appeal if his attorney certifies his presence is necessary for the appeal. O.C.G.A. § 42-5-50(c). No sheriff or DOC approval is required.[26] The DOC's regulations even provide that the State will pay for the cost of maintaining felony prisoners in county jails after conviction and sentencing until their appeals are concluded. Ga. Comp. R. & Regs. § 125-2-4-.02(d).[27]

Second, due to prison overcrowding, the DOC has broad discretion to assign convicted felons to serve their state sentences in county jails and to reimburse counties

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the Georgia Department of Corrections, and the State has authority over the inmate on the place of confinement and on the computation of sentence. *See Eubanks v. State,* 229 Ga. App. 667, 667-68 (1997). The State may allow felons to remain in the county jail and reimburse the county. O.C.G.A. § 42-5-51(b)-(c).

[26] *See Helmeci v. State,* 230 Ga. App. 866, 871 (1998) (stating that O.C.G.A. § 42-5-50(c) "is clearly couched in mandatory language, indicating that a trial court has no discretion in denying a request to remain in the county pending appeal"); O.C.G.A. § 42-5-50(b) (stating except as otherwise provided in O.C.G.A. § 42-5-50(c), the DOC shall assign the place of confinement for convicted felons).

[27] "The Department of Corrections will provide reimbursement to counties for cost of maintaining felony prisoners in the county jails after conviction and sentencing and before such prisoners are transferred to a place of confinement as directed by the Commissioner, Department of Corrections." Ga. Comp. R. & Regs. § 125-2-4-.02(d) (describing reimbursement procedure and including felons remaining in county jail during appeal as inmates for which reimbursement may be obtained).

for their incarceration at a daily rate.[28] The state trial court must notify the DOC that a person is convicted of a felony within thirty days. O.C.G.A. § 42-5-50(a). The DOC then has fifteen days to elect to transfer the inmate or to start paying for his incarceration. O.C.G.A. § 42-5-51(c). No sheriff's approval is required.

Third, if a convicted felon's state probation is revoked, a state judge has discretion to sentence the felon to serve his state sentence in the county jail in certain circumstances. O.C.G.A. § 17-10-1(a)(3)(A). No sheriff's approval is required.

Fourth, convicted felons serving a paroled state sentence, under the DOC's authority, who violate parole may be held in county jails until a state judge formally revokes their state parole. Ga. Op. Atty. Gen. No. 82-33 (1982). No sheriff's approval is required.

Fifth, convicted felons in DOC custody may serve their state sentences in county jails if they are participating in a state-sponsored project and the sheriff approves. O.C.G.A. § 42-5-51(d).

Yet another class of inmates in county jails are those serving state misdemeanor sentences. If a defendant is convicted of a state misdemeanor offense, the state judge

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[28] *See Clayton County v. Evans*, 258 Ga. 146, 147 (1988) (noting "the General Assembly – aware of the problem of the existence of overcrowded state prisons – made provision in O.C.G.A. § 42-5-51(c) for the reimbursement to the county . . . for the cost of incarcerating state prisoners").

has discretion to sentence the defendant to, among other locations, the "county jail."[29] O.C.G.A. § 17-10-3(a)(1)-(3).

Because the State uses the statewide network of county jails to incarcerate its felony and misdemeanor offenders, it is not surprising that the State expressly authorizes sheriffs to act beyond their respective counties and to transfer prisoners to the county jails of other sheriffs.[30] In addition to venue changes, the State requires sheriffs to take persons arrested to a jail of another county if the sheriff's county jail is in an "unsafe condition." O.C.G.A. § 42-4-4(a)(3).[31]

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[29] The other locations include a "county correctional institution;" a "state probation detention center or diversion center;" or a "state correctional institution" if the "crime was committed . . . within the confines of a state correctional institution." O.C.G.A. § 17-10-3(a)(1)-(3). Under Georgia law, county jails are separate facilities from "county correctional institutions." *See* O.C.G.A. § 42-5-53.

[30] In operating the jail, Sheriff Peterson also must carry out many state policies on how inmates are treated and jails are operated. The State regulates the preparation, service, and number of meals and inspects the jail periodically "to ensure against the presence of unsanitary conditions." O.C.G.A. § 42-4-32(a)-(c). The State prescribes that a jailer shall not be "guilty of willful inhumanity or oppression to any inmate under his care and custody." O.C.G.A. § 42-4-5. The State sets the minimum safety and security requirements for jails. O.C.G.A. § 42-4-31(a).

We do not contend that these statutory jail duties, by themselves, transform sheriffs into state officials. Instead, we mention these statutes as further evidence of how the duties of sheriffs in Georgia are governed by the State and not by county governing bodies. This background is relevant to our consideration of whether the sheriff is an arm of the state or the county in establishing force policy as to Manders.

[31] With respect to § 42-4-4(a)(3) transfers, the Georgia Supreme Court instructs that "[t]he legislature has vested the sheriff alone with

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The State also permits sheriffs to exercise their discretion to "transfer[ ] a prisoner to another jail in another county if the sheriff concludes that such transfer is in the best interest of the prisoner or that such transfer is necessary for the orderly administration of the jail." O.C.G.A. § 42-4-4(b). In a similar vein, "[w]hen there is no secure jail in a county or when it is deemed necessary by the sheriff, any person committing an offense in the county may be sent to a jail in another county determined to be suitable by the sheriff." O.C.G.A. § 17-7-1.[32]

Given sheriffs' significant corrections role for state offenders, the State further requires sheriffs to keep detailed records of persons committed to county jails. O.C.G.A. § 42-4-7. These records include the "age, sex, race, under what process such person was committed and from what court the process issued, the crime with which the person was charged, the date of such person's commitment to jail, the day of such person's discharge, under what order such person was discharged, and the court from which the order issued." O.C.G.A. § 42-4-7(a). The State mandates that a sheriff or a deputy who fails to

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the . . . administrative authority to order such transfers" and that a state superior court may not order such a transfer *sua sponte*, although the sheriff would be required to carry out an order of the court if the issue of the unsafe conditions of the jail were properly before the court. *In re Irvin*, 254 Ga. 251, 253-54 (1985).

[32] Although a state felony inmate has a right to remain in the county jail during appeal under O.C.G.A. § 42-5-50(c), the sheriff may transfer that inmate to another jail if the sheriff's jail is unsafe. *See Helmeci*, 230 Ga. App. at 871 (concluding the "conditions authorizing transfer [under O.C.G.A. § 42-4-4(a)(3) were] not present" and "the trial court erred in denying Helmeci's motion to remain in the county jail pending the disposition of his appeals").

comply with these state requirements shall be fined for contempt and subject to removal from office. O.C.G.A. § 42-4-4(c).

In sum, these requirements are *not* state laws of general application but represent the State's managing and controlling where state offenders are incarcerated, designating that certain state offenders serve state time in county jails, and then assigning sheriffs specific corrections duties regarding those state offenders.[33] In contrast, counties have no authority over what corrections duties sheriffs perform, or which state offenders serve time in

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[33] Sheriffs' incarceration of offenders in the county jail, such as Manders, who are charged with state felonies and being prosecuted by the State of Georgia in state superior courts is a state function. The State requires that sheriffs not only transport state offenders to and from state superior courts and attend all sessions of those state courts, but also take custody of state offenders in county jails between those state superior court sessions. The State of Georgia has a Department of Corrections, a state agency, that operates state prisons and incarcerates felony offenders after conviction. But the existence of the Department of Corrections does not preclude the State from utilizing other law enforcement agencies, such as sheriffs, to perform part of the State's incarceration function for state offenders. As detailed above, the State requires sheriffs to take custody of state offenders, both pre- and post-conviction, in county jails, and counties have no law enforcement or other corrections authority over state offenders in county jails.

In fact, it makes sense for the State to utilize the network of county jails to incarcerate state offenders in the location of the state superior courts not only during pre-trial and trial, but also while the inmates serve state sentences during their appeals. Indeed, as explained above, the Department of Corrections can elect to have state offenders serve the entire state sentence in the county jail. That the State also operates state prisons and requires Clinch County to build and fund a county jail and to provide food, clothing, and medical necessities to inmates does not diminish the important state functions that Sheriff Peterson performs relative to state offenders, such as Manders, in the county jail.

county jails, or who is in charge of the inmates in the county jails.[34]

IV. APPLYING ELEVENTH AMENDMENT FACTORS

Having examined Georgia's law governing sheriffs, we now specifically apply the Eleventh Amendment factors to Sheriff Peterson's particular functions in issue. We need not, and do not, decide today whether Georgia sheriffs wear a "state hat" for Eleventh Amendment purposes for all of the many specific duties assigned directly by the State. We have recounted these duties as relevant Georgia law that reflects on the nature and character of the sheriff's office. We, however, must decide here only whether Sheriff Peterson is an "arm of the State" in establishing

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[34] *Griffin v. Chatham County*, 244 Ga. 628 (1979), underscores how counties lack authority over sheriffs' operation of county jails. In *Griffin*, the Georgia Supreme Court concluded that the sheriff must accept city prisoners only because a local act of the State legislature granted Chatham County power over the county jail and that County's commission had contracted with the City of Savannah to maintain city prisoners in the county jail. *Id.* at 629-30. *Griffin* involved a local act by the State legislature that was applicable only to Chatham County. That local act granted the Chatham County commissioners considerable power over the county jail as follows: "Said Commissioners [of Chatham County] shall have power to make proper rules and regulations for the government and control of said jail of Chatham County, and the prisoners and inmates therein, and, except as hereinbefore provided, are hereby invested with the management and care of said jail." *Griffin*, 244 Ga. at 630 n.8 (quotation marks omitted) (alteration in original). In the present case, there is no similar local act by the State legislature regarding the Clinch County jail. Absent such a local act, counties are precluded from power or authority over sheriffs.

force policy at the jail and in training and disciplining his deputies in that regard.

A. How State Law Defines the Entity

The first factor in the Eleventh Amendment analysis is how Georgia law defines the sheriff's office. In Georgia, the office of sheriff is an elected constitutional office. Although a sheriff performs his duties mainly, although not always, within the geographical confines of a county, the essential governmental nature of his office is (a) to continue to perform his historical common law duties to enforce the law and preserve the peace on behalf of the sovereign State and (b) to perform specific statutory duties, directly assigned by the State, in law enforcement, in state courts, and in corrections. Most of those duties are an integral part of the State's criminal justice system and are state functions.

Moreover, the sheriff's office is a separate and independent office from both Clinch County and its governing body. Counties delegate no powers or duties to sheriffs. Sheriff Peterson and his deputies at the jail are not employees of Clinch County. Indeed, Georgia's Constitution precludes Clinch County from having any control over the sheriff's office.

Although the specific duties the State assigns to sheriffs shed considerable light on the character of the sheriff's office, we must focus on the nature of the particular function at issue here: force policy. The sheriff's authority to use force or the tools of violence, whether deadly or non-deadly force, and the sheriff's obligation to administer the jail are directly derived from the State and not delegated through the county entity. In addition, use of

force and creating force policy are quintessential policing functions, exercised by sheriffs in initial arrests, in subduing inmates in sessions of state superior courts, or in quelling disruptive inmates in county jails.

While we must consider context, the location where the sheriff's policing function is performed does not automatically transmute the function into a state function or a county function. In administering the jail, the sheriff does not check his arrest powers or force authority at the door. Instead, he and his deputies bring them into the jail and exercise them in the jail setting. This case is not a case of feeding, clothing, or providing medical care to inmates, which necessarily occur within the jail. Instead, it involves Sheriff Peterson's force policy, which happens to be at issue in the jail context in this particular case. While the jail context is important, it likewise is significant that the sheriff's force policy is at issue in many settings and that location alone does not control. It is also material that the State uses the county jail to incarcerate not only pretrial detainees charged with state offenses, such as Manders, but also state offenders serving state sentences after conviction.

Based on our review of Georgia law, we conclude that the sheriff wears a "state hat" when he creates and implements force policy in the jail.[35] Thus, this first factor weighs heavily in favor of immunity.

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[35] The dissent raises a parade of hypothetical scenarios from the Chief of the Atlanta Police Department to a security guard watching the cosmetics counter at a department store. (Dissent, Barkett, J., p. 59). Nowhere does this opinion in any way suggest or imply that a private security guard's or a city or county police officer's power to

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B. Where State Law Vests Control

The second factor of the Eleventh Amendment analysis examines where Georgia law vests control. In addition to mandating and controlling sheriffs' specific duties as outlined above, only the State possesses control over sheriffs' force policy and that control is direct and significant in many areas, including training and discipline.

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arrest or use force entitles that officer to Eleventh Amendment immunity. All certified peace officers in Georgia have certain arrest and force powers granted by the State. The key question is not what arrest and force powers sheriffs have, but *for whom* sheriffs exercise that power. A city delegates and exercises its policing function through its city police officers and a county through county police officers, and thus city and county police officers act for and represent the city and county, respectively. In contrast, the State delegates and performs certain state policing and corrections functions through several law enforcement agencies, including sheriffs, and sheriffs act for and represent the State in those assigned tasks. As explained previously, under Georgia law counties lack power in the area of law enforcement except to operate a county police force. *See supra* note 17.

What additionally makes sheriffs distinct from city and county police officers is that the State expressly has vested in sheriffs specific state functions and that sheriffs utilize their arrest and force powers in executing state functions. As detailed above, sheriffs perform a variety of specific state functions in the State's criminal justice system, from attending every session of state superior court, to taking custody of state offenders, both pre- and post-conviction, in county jails. Sheriff Peterson's authority over inmates and the duty to administer the jail flow from the State, not Clinch County, those functions and duties pertain chiefly to affairs of the State in Clinch County, and Clinch County plainly has no control or authority over Sheriff Peterson's force policy at the jail or his deputies at the jail.

1. State Requires Annual Training of Sheriffs

The State requires *annual* specialized training of sheriffs in all counties by the Georgia Sheriffs' Association with the assistance of the Georgia Public Safety Training Center.[36] O.C.G.A. § 15-16-3. The annual training of sheriffs "shall be generally devoted to contemporary law enforcement, investigation, judicial process, and corrections practices and specifically shall be germane to the . . . office of sheriff in the several counties of this state." O.C.G.A. § 15-16-3(a). The "purpose of this Code section [O.C.G.A. § 15-16-3] is to promote professionalism within the office of sheriff by ensuring the highest possible quality of law enforcement training is offered to each sheriff on an annual basis." O.C.G.A. § 15-16-13(a). It is reasonable to assume that such training includes instruction on force policy and hiring and training deputies. Sheriff Peterson testified that in preparing the force policy in his Manual he adopted some state policies. Furthermore, the Georgia Sheriffs' Association uses state funds (or federal funds distributed to the State) to cover all training costs. *See* O.C.G.A. § 15-16-3(d).

Notably, if a sheriff fails to comply with the annual training requirements, the *Governor* – the State's chief – may suspend the sheriff without pay for ninety days.

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[36] The State prescribes the qualifications for sheriffs. The Georgia legislature has declared that "proper qualifications and standards be required of the . . . sheriff so as to increase the effectiveness . . . of the several sheriffs of this state as law enforcement officers to combat crime." O.C.G.A. § 15-16-1(a). The State mandates a detailed set of qualifications that a person must satisfy to be a candidate for the sheriff's office in any county. *See* O.C.G.A. § 15-16-1(a)-(c).

O.C.G.A. § 15-16-3(e)(4). The State also mandates that a sheriff's failure to complete annual training requirements will result in the loss of arrest powers. O.C.G.A. § 15-16-3(e)(1),(4). Again, these rules are not laws of general application, but are specific statutes whereby the State directly requires annual training of all sheriffs, controls the training subject matter, pays for the training, and sanctions sheriffs for non-compliance. In contrast, counties have no control over sheriffs or their training.

2. Governor Disciplines Sheriffs

In addition, the Governor has broad investigation and suspension powers regarding any misconduct by a sheriff in the performance of any of his duties. O.C.G.A. § 15-16-26.[37] If a sheriff's policy permits excessive force in the county jail, plainly the Governor may discipline the sheriff. If a sheriff fails to take custody of state offenders in the county jail, plainly the Governor may discipline the sheriff. The State legislature expressly has made Sheriff Peterson answerable to the Governor for his conduct and policies.

Specifically, the Governor may initiate an investigation of any suspected misconduct by any sheriff and may suspend the sheriff. O.C.G.A. § 15-16-26(a), (c). The Governor selects two sheriffs, who along with the State Attorney General, conduct the investigation for the Governor.

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[37] The Governor may determine that an investigation of a sheriff "should be made as a result of criminal charges, alleged misconduct in office, or alleged incapacity of the sheriff to perform the functions of his office." O.C.G.A. § 15-16-26(a).

O.C.G.A. § 15-16-26(a). The State funds the investigation. *Id.*

If the Governor's committee recommends suspension to the Governor, the Governor may suspend the sheriff for sixty days and extend that suspension for thirty additional days. O.C.G.A. § 15-16-26(c). This disciplinary procedure is direct, substantial, and immediate state control over the sheriff's acts. If Sheriff Peterson permits excessive force, all the Governor must do is have a committee immediately investigate and report, and the Governor can suspend him.[38]

Moreover, if the Governor believes the sheriff should be removed from office, the Governor is "authorized to request the district attorney of the county of the sheriff's residence to bring a removal petition against the sheriff" based upon the evidence reported by the Governor's investigation committee.[39] *Id.* The Governor may order

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[38] A wholly separate statute, O.C.G.A. § 45-5-6, provides for removal of any public official upon a felony indictment. *See Gipson v. Bowers,* 263 Ga. 379 (1993) (stating that the Governor "can take no official action against a sheriff unless there has been a criminal indictment" first). The above Georgia statute, O.C.G.A. § 15-16-26, however, is not a law of general application to all public officials but independently addresses *only sheriffs* and the Governor's investigation and suspension of sheriffs for any misconduct in office, which do not require a criminal indictment or even any suspected criminal activity. *Compare* O.C.G.A. § 15-16-26, *with* § 45-5-6.

[39] The Governor necessarily acts through others in filing removal petitions, and the district attorney acts for the State in filing a petition to remove a sheriff. *See Owens v. Fulton County,* 877 F.2d 947, 951-52 (11th Cir. 1989) (concluding district attorney acted for the State of Georgia and not Fulton County in prosecution decisions, even though elected by only Fulton County voters and although his office's budget was provided in large part by county funds). The state judicial proceedings for

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additional investigation "by the committee, by the Georgia Bureau of Investigation, by other law enforcement agencies . . . or by any special committee appointed by the Governor for such purpose." O.C.G.A. § 15-16-26(c).

3. Counties Lack Control

In contrast, counties have no authority, control over, or involvement in Sheriff Peterson's force policy at the jail, or his training and disciplining of deputies in that regard. While Georgia counties have obligations involving the jail structure and inmates' food, clothing, and medical necessities, such duties involve wholly separate and distinct matters from the sheriff's force policy at the jail and his training and disciplining of deputies in that regard.[40]

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removal of a sheriff are identical to those for the removal of a clerk of the superior court under O.C.G.A. § 15-6-82. O.C.G.A. §§ 15-16-10(b) & 42-4-4(c).

[40] It has been suggested that counties have more oversight than the State over the sheriff's operation of the jail because "county governing authorities have at their disposal the investigative powers of grand juries, *see* [O.C.G.A.] § 15-12-71(c) (2001), which must inspect jails annually and make appropriate recommendations to the county commission. [O.C.G.A.] § 15-12-78." (Dissent, Barkett, J., p. 74). This suggestion misapprehends these statutes and the well-established function of grand juries in the State's justice system.

Under Georgia law, the grand jury has two principal duties. First, the grand jury historically and functionally is a wholly independent investigating and accusing body in the State's felony cases. O.C.G.A. §§ 15-12-61, 15-12-71, 15-12-74, 15-12-82, 15-12-100. Second, the State vests in the grand jury the civil power and function of inspecting and investigating not just the county jail, but any county building, the county governing body itself, or any county commissioner. O.C.G.A. § 15-12-71(b)(2). Because the grand jury is independent and equally oversees county governing authorities, it cannot fairly be said that

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Because of the State's direct and substantial control over the sheriff's duties, training, and discipline and the county's total lack thereof, this control factor also weighs heavily in favor of Sheriff Peterson's entitlement to Eleventh Amendment immunity.[41]

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grand juries work at the counties' disposal or act for counties in investigating sheriffs or county jails.

Instead, grand jurors, like sheriffs, are drawn from the county, paid with county funds, but perform discrete functions in the State's justice system. To the extent supervision exists, superior court judges in the state judicial system supervise grand juries. O.C.G.A. §§ 15-12-71(a); 15-12-80, 15-12-100(a), 15-12-101. Superior court judges draw and impanel grand jurors, charge them, administer their oaths, and select their foreperson or direct the jury itself to select a foreperson. O.C.G.A. §§ 15-12-62, 15-12-68.

Given that many state offenders serve time in county jails, the State legislature also requires that grand juries each year "inspect the condition and operations of the county jail," O.C.G.A. § 15-12-71(b)(1), and "the offices of the district attorney at least once in every three calendar years." *Id.* The grand jury "may prepare reports or issue presentments based upon its inspections," then filed in the superior court. O.C.G.A. §§ 15-12-71(b)(3); 15-12-80. At each annual § 15-12-71(b)(1) inspection, O.C.G.A. § 15-12-78 requires that the grand jury make recommendations regarding heating and ventilation, which the county "shall strictly enforce," and presentments as to the "treatment of the inmates."

[41] We reject the arguments (a) that the State's control over sheriffs represents nothing more than "its role as the seat of legislative power in Georgia" and its "sovereign prerogative to structure local government," (Dissent, Barkett, J., pp. 66-67) and (b) that the State's control over sheriffs is "the kind of indirect and ultimate control . . . reserved by the state with respect to every state-created entity." (Dissent, Anderson, J. p. 52). We fully recognize that ultimate control of every state-created entity resides with the State and that the State may destroy or reshape any political subdivision as it sees fit, including the sheriff's office. The key differences here are that the State of Georgia has structured Sheriff Peterson's office as independent of Clinch County, that the State has vested in Sheriff Peterson specific state functions, that most of Sheriff

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C. Funds

The third factor in the Eleventh Amendment analysis is where the entity derives its funds. The State funds the annual training of sheriffs, funds the Governor's disciplinary procedure over sheriffs for use of excessive force, and pays for certain state offenders assigned to the county jails under the sheriff's supervision.[42] Thus, state funds are involved to some extent in the particular functions of Sheriff Peterson at issue.

While Clinch County bears the major burden of funding Sheriff Peterson's office and the jail, it is because the State so mandates. By state statutes, Clinch County must (1) maintain the jail structure, (2) appropriate funds for necessities to inmates (such as food, bedding, clothing, electricity, and sanitation) and the salaries of Sheriff Peterson and his deputies, and (3) pay the premium for the Sheriff's official bond. O.C.G.A. §§ 36-9-5; 42-5-2(a); 15-16-20; 45-4-7.

Manders relies on O.C.G.A. § 42-5-2(a), which provides, in part, that "it shall be the responsibility of the governmental unit, subdivision, or agency having the

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Peterson's duties relate directly to, and are an integral part of, the State's criminal justice system, and that the State can discipline directly Sheriff Peterson for any misconduct. That sheriffs act as to state matters (and not as to local government matters) is, in part, why counties, and cities too, have no power, authority, or control over sheriffs.

[42] The State pays the county the per diem rate for convicted state offenders in the county jail, and the county, in turn, funds the sheriff's budget. O.C.G.A. § 42-5-50(d); Ga. Comp. R. & Regs. § 125-2-4.02(d). The State requires the county to pay for pre-trial state offenders, but, once convicted, the State pays.

physical custody of an inmate to maintain the inmate, furnishing him food, clothing, and any needed medical and hospital attention."[43] But Manders does not allege that Sheriff Peterson denied him necessities in O.C.G.A. § 42-5-2. Rather, Manders challenges only Sheriff Peterson's force policy at the jail and the training and disciplining of his deputies.

Furthermore, Clinch County's financial control is attenuated because (a) the State mandates Sheriff Peterson's minimum salary and official bond amount, and (b) Clinch County sets the total budget but cannot dictate how Sheriff Peterson spends it. The Georgia Supreme Court has held that counties "must provide reasonably sufficient funds to allow the sheriff to discharge his legal duties," and that "the county commission may not dictate to the sheriff how that budget will be spent in the exercise of his duties." *Chaffin v. Calhoun,* 262 Ga. 202, 203-04 (1992);[44]

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[43] We stress that this case does not involve medical care, which counties have a statutory obligation to provide to inmates in county jails. O.C.G.A. § 42-5-2. *See, e.g., Epps v. Gwinnett County,* 231 Ga. App. 664, 670 (1998) (Gwinnett County contracted with Prison Health Services, Inc.); *Cherokee County v. North Cobb Surgical Assocs.,* 221 Ga. App. 496, 499 (1996); *Macon-Bibb County Hosp. Auth. v. Houston County,* 207 Ga. App. 530, 531-32 (1993) (concluding Houston County owed hospital for medical care provided to inmate in county jail).

[44] In *Chaffin,* the county, over the sheriff's objection, shifted the responsibility for patrolling and drug enforcement to the new county police department and reduced the sheriff's budget by forty-seven percent. 262 Ga. at 202, 204. The trial court granted the county's request for an injunction requiring the sheriff to cooperate in the implementation of the plan to transfer personnel and equipment to the newly created county police department. *Id.* at 202-03. The Georgia Supreme Court affirmed, holding that the trial court had not abused its discretion in finding that the remaining budget was sufficient to allow the sheriff to perform his duties. *Id.* at 204. In doing so, the Georgia

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see Boswell v. Bramlett, 274 Ga. 50, 52 (2001). Georgia's Constitution further prevents counties from taking any action affecting any elective county office or the personnel thereof. Ga. Const. art. IX, § 2, ¶ 1(c)(1).

Payment of Sheriff Peterson's budget, when required by the State, does not establish any control by Clinch County over his force policy at the jail or how he trains and disciplines deputies.[45] By virtue of State mandates,

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Supreme Court reaffirmed that: (1) "Sheriff Chaffin is an elected, constitutional officer," *Chaffin,* 262 Ga. at 203 (citing Ga. Const. art. IX, § 1, ¶ 3(a)); (2) "[t]he sheriff is not an employee of the county commission," *Chaffin,* 262 Ga. at 203 (citing *Board of Commissioners of Randolph County v. Wilson,* 260 Ga. 482 (1990)); and (3) although the county commission has the power to create its own county police force, " 'the commissioners could not divest the sheriff of his power and duty to enforce the laws and preserve the peace,' " either directly or indirectly by exercise of their fiscal authority or control of county property, *Chaffin,* 262 Ga. at 203 (quoting *Wolfe v. Huff,* 232 Ga. 44, 45 (1974)).

In another budget battle between the sheriff and county commission in *Board of Commissioners of Randolph County v. Wilson,* the sheriff requested $70,000 to pay deputies, but the county commission budgeted a lump sum of only $60,080. 260 Ga. at 482. The Georgia Supreme Court held that the county commission did not abuse its authority, viewing the case as "involving the power of the commission to approve the sheriff's budget rather than the power of the sheriff to hire deputies." *Id.* at 484.

[45] Alabama sheriffs are elected by county voters, their budgets are paid from county funds, and their jurisdiction is limited to the borders of their respective counties. The Supreme Court found these factors insufficient to establish county control over sheriffs and decided that Alabama sheriffs act for and represent the State in their law enforcement duties. *See McMillian v. Monroe County,* 520 U.S. 781, 791 (1997) ("The county's payment of the sheriff's salary does not translate into control over [the sheriff], since the county neither has the authority to change his salary nor the discretion to refuse payment completely."). The Supreme Court concluded that the ability of the county governing body to reduce the sheriff's budget as long as the budget remains

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both state and county funds are involved in the particular functions in issue. This state involvement is sufficient to tilt the third factor of the Eleventh Amendment analysis toward immunity.

D. Liability for and Payment of Adverse Judgments

The fourth factor is the source of the funds that will pay any adverse judgment against Sheriff Peterson in his official capacity. Before applying this factor, we discuss three recent cases addressing it.

In *Hess v. Port Authority Trans-Hudson Corp.*, 513 U.S. 30, 35-39 (1994), the Supreme Court denied Eleventh Amendment immunity to an interstate railway-port authority, created under the U.S. Constitution's Interstate Compact Clause and controlled by the federal government

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reasonable results in "attenuated and indirect influence over the sheriff's operations." *See id.* at 791-92. Although the analysis required on the Eleventh Amendment question is different from that for a § 1983 policymaker claim, the issue of control under state law is a relevant factor to both inquiries.

After noting that Alabama law cut both ways, the Supreme Court in *McMillian* concluded that Alabama sheriffs act for the State of Alabama, not the county, and then made this apt observation about Alabama law, which applies equally to Georgia law regulating its sheriffs: "We are not, of course, predicting that state law will always speak with perfect clarity . . . . It may not be possible to draw an elegant line that will resolve this conundrum." *McMillian*, 520 U.S. at 793 (quoting *Praprotnik*, 485 U.S. at 125, 126-27). This case exemplifies that axiom, and it also explains why we narrowly decide only that Georgia sheriffs in their official capacity act for the State in establishing force policy in the county jail and in training and disciplining their deputies in that regard.

and two states. Because the *federal government* was one of the "multiple creator-controllers," the five-justice majority in *Hess* concluded that the states had ceded a portion of their sovereignty to Congress and that having the "Compact Clause" entity respond in federal court did not affront "the dignity" of the states. *Id.* at 47. *Hess* further concluded that "both legally and practically" neither state was obligated to pay any judgment against the entity. *Id.* at 51-52. Rather, the entity was financially independent, with funds from private investors, tolls, fees, and investment income. *Id.* at 36, 49-50. Although weighing this source-of-payment factor heavily, *Hess* never suggests that for Eleventh Amendment immunity a state treasury drain is required per se and *Hess* notes that "current Eleventh Amendment jurisprudence emphasizes the integrity retained by each State in our federal system." *Hess,* 513 U.S. at 39.[46]

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[46] It is at the outset of its opinion in *Hess* that the Supreme Court discusses "current" Eleventh Amendment jurisprudence and its emphasis on "the integrity retained by each State in our federal system." *Hess,* 513 U.S. at 39. The Eleventh Amendment's role historically was to protect the State's treasury from federal courts forcing the State to repay war debts. *Id.* The Court in *Hess* discussed the state treasury factor but only after first concluding that "[s]uit in federal court is not an affront to the dignity of a Compact Clause entity, for the federal court, in relation to such an enterprise, is hardly the instrument of a distant, disconnected sovereign; rather, the federal court is ordained by one of the entity's founders." *Id.* at 41. The Supreme Court continued its focus on the importance of the sovereign integrity of the State under the Eleventh Amendment and pointed out why the States' integrity was not compromised when a Compact Clause entity is sued in federal court, stating:

> Nor is the integrity of the compacting States compromised when the Compact Clause entity is sued in federal court. As part of the federal plan prescribed by the Constitution, the

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The focus of the Supreme Court in *Regents of the University of California v. Doe,* 519 U.S. 425, 430-31 (1997), was on "potential legal liability" and "the risk of adverse judgments," as opposed to requiring that state funds actually pay the judgment. In *Regents,* the federal government indemnified a state university, and the litigation had "no impact" on the state treasury. *Id.* Nevertheless, the Supreme Court determined that this full indemnity did not affect the university's immunity. *Id.* The Supreme Court emphasized that "[t]he Eleventh Amendment protects the State from the risk of adverse judgments even though the State may be indemnified by a third party," and "it is the entity's potential legal liability, rather than its ability or inability to require a third party to reimburse it, or to discharge the liability in the first instance, that is relevant." *Id.* at 431.[47]

States agreed to the power sharing, coordination, and unified action that typify Compact Clause creations. Again, the federal tribunal cannot be regarded as alien in this cooperative, trigovernmental arrangement.

Id. at 41-42. The Supreme Court further stressed that "federal courts are not alien to a bistate entity Congress participated in creating." *Id.* at 47.

The Court in *Hess* focused on the state treasury factor, but only after it concluded that the sovereign integrity of the State was not implicated when a Compact Clause entity is sued in federal court. In stark contrast, because sheriffs act for and represent the State, not the county, in promulgating force policy at the jail, the State's integrity is heavily involved in this case.

[47] Other than *Regents* and *Hess,* the only other recent Supreme Court discussion of the "arm of the State" doctrine in the Eleventh Amendment context is a footnote in *Auer v. Robbins,* 519 U.S. 452 (1997). In *Auer,* the Supreme Court concluded that the St. Louis Board of Police Commissioners was not an arm of the state: although the

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Thereafter, this Court applied these principles in *Shands Teaching Hospital and Clinics, Inc. v. Beech Street Corp.*, granting immunity to private corporations that contracted with the state to administer its health insurance program and to provide a network of medical services. 208 F.3d at 1310-11, 1313. We stated that "although these are private corporations that are neither controlled nor funded by the state, they are protected by governmental immunity when they are clearly acting as agents of the state." *Id.* at 1311. Noting that other circuits had not adopted an approach of total or no immunity, *Shands* looked to the relief sought and whether the judgment against the private corporation "would implicate the state treasury or interfere with the administration of [a] state . . . program." *Id.* Given that the State could be sued for the negligence of the agent corporations in untimely paying claims, we determined that the judgment against the private corporations "would implicate state funds" and that the private corporations would indemnify the state was immaterial. *Id.* at 1313.

Applying these principles to this case, we first determine that under Georgia law Clinch County would not pay a damages award against Sheriff Peterson. Georgia courts speak with unanimity in concluding that a defendant county cannot be held liable for the tortious actions or misconduct of the sheriff or his deputies and is not required to pay the

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Governor appointed four of the five members, "the city of St. Louis is responsible for the board's financial liabilities" and "the board is not subject to the State's direction or control in any other respect." *Id.* at 456 n.1. In contrast to *Auer*, Clinch County is not liable for Sheriff Peterson's acts, is not required to pay judgments against the Sheriff, and the State directs and controls the Sheriff in many respects.

resulting judgments.[48] Likewise, Georgia courts have concluded that counties are not liable for, and not required to give sheriffs money to pay, judgments against sheriffs in civil rights actions. *See Wayne County Bd. of Comm'rs v. Warren,* 236 Ga. 150, 152 (1976) ("[A] county has no liability in connection with the violations of the civil rights of any person by a county officer."). The Georgia Supreme Court in *Warren* quoted a Georgia statute stating that "[a] county is not liable to suit for any cause of action unless made so by statute." *Id.* at 151 (quotation marks omitted).[49] Thus, by statute, the county was not liable. In

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[48] *Wayne County Bd. of Comm'rs v. Warren,* 236 Ga. 150, 152 (1976) (concluding that a county has no liability for the violations of the civil rights of any person by a county sheriff); *Brown,* 221 Ga. App. at 201 (reversing denial of summary judgment for Peach County because the Peach County sheriff, not Peach County, was the proper party to sue and noting that deputy sheriffs "were employees of the sheriff and not Peach County"); *Lowe v. Jones County,* 231 Ga. App. 372, 373 (1998) (concluding "deputy sheriffs are employees of the sheriff, not the county, and the county cannot be held vicariously liable as their principal"); *Pettus v. Smith,* 174 Ga. App. 587, 588 (1985) (affirming summary judgment for county board of commissioners and concluding, "[a]s the county commissioners had no control over the official duties of the deputy sheriff . . . , they had no duty to determine whether a high-speed driving course rather than a defensive driving course was reasonably required to be supplied to deputy sheriffs"); *Chadwick v. Stewart,* 94 Ga. App. 329, 329-30 (1956).

[49] The statute quoted in *Warren* is former Georgia Code § 23-1502 (1933), which is now O.C.G.A. § 36-1-4. In the subsequent decision of *Chatham County Commissioners v. Rumary,* 253 Ga. 60 (1984), the Georgia Supreme Court held that the Chatham County Board of Commissioners was required to pay a judgment against a deputy sheriff for damages in an automobile collision because Chatham County's own Code provided for the defense of the deputy at trial and payment of final judgments awarded in courts. *Id.* at 60-61. The Georgia Supreme Court emphasized that "[t]he nature of the [county] Board's liability here is not that of *respondeat superior* [for the deputy sheriff's acts],

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addition, the Georgia Supreme Court concluded that "there is no duty of the county to furnish the sheriff with money to settle a civil rights judgment entered against him." *Id.* at 152.[50]

Although Clinch County is not required to pay and although Sheriff Peterson argues that "the 'legal liability' for sheriffs in Georgia rests with the State of Georgia, not individual counties," we can locate no Georgia law expressly requiring the State to pay an adverse judgment against Sheriff Peterson in his official capacity. Sheriff Peterson thus apparently would have to pay any adverse federal court judgment against him in his official capacity out of the budget of the sheriff's office. In turn, this payment would reduce his budget, and the practical reality is that Sheriff Peterson must recoup that money from somewhere. If a significant adverse judgment occurs,

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but exists solely by virtue of its voluntary and self-imposed obligation to provide indemnification for the acts of its employees committed during the performance of their duties." *Id.* at 61. No evidence in this case suggests that Clinch County voluntarily has agreed to provide indemnification to Sheriff Peterson or his deputies. Further, the Supreme Court has instructed that indemnification does not remove the cloak of immunity. *Regents,* 519 U.S. at 430-31.

[50] *Haywood v. Hughes,* 238 Ga. 668 (1977), has been cited for the proposition that counties, by statute, are authorized to pay for the sheriff's legal costs in civil rights suits by third parties against sheriffs. *See* O.C.G.A. § 45-9-21. In *Haywood,* however, the Georgia Supreme Court emphasized that the statute authorizes counties to do so "in their discretion" and "give[s] the county considerable latitude in determining what actions will be defended." *Id.* at 669 (citing Ga. Code Ann. § 89-945, which is now O.C.G.A. § 45-9-21). In *Haywood,* the Glascock County Commissioners adopted a policy to pay attorney's fees in two specific suits against the sheriff. *Id. Haywood* demonstrates that Clinch County is not required to pay the sheriff's attorney's fees unless it elects to do so.

both county and state funds are implicated because Sheriff Peterson would need to seek a greater total budget from the county for his office and a greater daily rate from the State for felony offenders serving their state sentences in the county jail.

Never has the Supreme Court required an actual drain on the state treasury as a per se condition of Eleventh Amendment immunity.[51] *See Regents of the Univ. of Cal. v. Doe,* 519 U.S. 425; *Hess,* 513 U.S. 30; *Shands,* 208 F.3d 1308. This is because the Eleventh Amendment "is rooted in a recognition that the States, although a union, maintain certain attributes of sovereignty," and a purpose of the Eleventh Amendment is to "accord[ ] the States the respect owed them as members of the federation" and not to affront the "dignity" or "integrity" of a state by requiring

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[51] *Hess* says that the state treasury factor is a "core concern" of Eleventh Amendment jurisprudence. 513 U.S. at 51. It is true that the presence of a state treasury drain alone may trigger Eleventh Amendment immunity and make consideration of the other factors unnecessary. Thus, this is why some decisions focus on the treasury factor. If the State footed the entire bill here, there would be no issue to decide.

The Eleventh Amendment, however, does not turn a blind eye to the state's sovereignty simply because the state treasury is not directly affected. Moreover, the United States Supreme Court has never said that the absence of the treasury factor alone defeats immunity and precludes consideration of other factors, such as how state law defines the entity or what degree of control the State has over the entity. As mentioned earlier, although the state treasury was not affected, the *Hess* Court spent considerable time pointing out how that lawsuit in federal court did not affect the dignity of the two States because they had ceded a part of their sovereignty to the federal government as one of the creator-controllers of the Compact Clause entity in issue. If the state-treasury-drain element were always determinative in itself, this discussion, as well as the other control discussion, would have been unnecessary. *See supra* note 46.

a state to respond to lawsuits in federal courts. *Hess,* 513 U.S. at 39-40 (citation and quotation marks omitted). "[C]urrent Eleventh Amendment jurisprudence emphasizes the integrity retained by each State in our federal system." *Id.* at 39. The State's "integrity" is not limited to who foots the bill, and, at a minimum, the liability-for-adverse-judgment factor does not defeat Sheriff Peterson's immunity claim.

V. CONCLUSION

Having applied the Eleventh Amendment factors, we conclude that Sheriff Peterson in his official capacity is an arm of the State, not Clinch County, in establishing use-of-force policy at the jail and in training and disciplining his deputies in that regard.[52] Therefore, Sheriff Peterson is entitled to Eleventh Amendment immunity in this case.[53]

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[52] Never before has this Court discussed or decided *en banc* the particular issue in this case. We think that no panel actually has decided the question before this case. In prior § 1983 cases, we merely accepted official capacity suits against Georgia sheriffs as suits against their respective counties. *See, e.g., Alexander v. Fulton County,* 207 F.3d 1303, 1322 n.14 (11th Cir. 2000); *Wayne v. Jarvis,* 197 F.3d 1098, 1105 (11th Cir. 1999). In these cases, we did not decide whether, under Georgia law, sheriffs are agents for the State or the counties, and it does not appear the parties raised the question. To the extent that our prior decisions state or imply that Georgia sheriffs act for counties regarding the particular functions in issue – force policy and training and disciplining of deputies in that regard – we overrule those decisions.

[53] We are mindful of the Supreme Court's instruction that, before reaching an Eleventh Amendment issue, a court should address "the question [of] whether the statute itself *permits* the cause of action it creates to be asserted against States." *Vermont Agency of Nat. Res. v. United States ex rel. Stevens,* 529 U.S. 765, 779 (2000) (emphasis in

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We need not answer, and do not answer, today whether Sheriff Peterson wears a "state hat" for any other functions he performs. We conclude only that he does as to the limited functions at issue in this case.

The first two factors weigh heavily in favor of immunity, and the third factor tilts that way as well. Sheriffs' duties and functions are derived directly from the State, performed for the State, and controlled by the State. The State of Georgia has exercised its managerial prerogative: (a) to incarcerate state offenders, pretrial and post-conviction, in county jails, among other locations; (b) to assign sheriffs certain specific state functions in law enforcement, state courts, and corrections, including making sheriffs in charge of state offenders in county jails; (c) to control sheriffs' duties, train sheriffs in those duties, and discipline sheriffs; (d) to preclude any county control over sheriffs but nonetheless require counties to fund the jail structure and sheriffs' budgets; and (e) for the State to pay for sheriffs' training and discipline, as well as certain state offenders in the county jail. Given these principles of Georgia law, we conclude that sheriffs act for the State, not counties, as to the functions in issue.[54]

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original). If sheriffs in their official capacity are arms of the state when exercising certain functions, then an issue arises whether Manders's § 1983 suit is subject to dismissal on the independent ground that they are not "persons" for purposes of § 1983. *See Will v. Michigan Dep't of State Police,* 491 U.S. 58, 71 (1989). This statutory issue, however, is not before us as it was neither briefed nor argued on appeal.

[54] It has been suggested that the sheriff's office is an independent, constitutional, elected office that is neither the State nor the county. (Dissent, Anderson, J., p. 53). Throughout this litigation the parties have briefed and framed the legal issue in this case *solely* as whether

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As to the final fourth factor in the Eleventh Amendment analysis, although the State and the county are not required to pay an adverse judgment against the sheriff, both county and state funds indirectly are implicated. In any event, the State's sovereignty and thus its integrity remain directly affected when federal court lawsuits interfere with a state program or function. At a minimum, this final factor does not defeat immunity.

Accordingly, we reverse the district court's order denying Sheriff Peterson's motion for summary judgment and remand this case to the district court for proceedings consistent with this opinion.

REVERSED AND REMANDED.

ANDERSON, Circuit Judge, dissenting, in which TJOFLAT, BIRCH and WILSON, Circuit Judges, join:

I respectfully dissent. I submit that the opinion for the court misapplies the appropriate Eleventh Amendment analysis. In my judgment, the most favorable face that the sheriff might put on this case would paint this case as similar to *Hess v. Port Authority Trans-Hudson Corp.*, 513 U.S. 30, 115 S.Ct. 394 (1994). In *Hess,* the "[i]ndicators of immunity or the absence thereof do not . . . all point the

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Sheriff Peterson in his official capacity acts on behalf of the State *or* Clinch County in the context of the Eleventh Amendment. Thus, we decide that controversy. No other issue is before us. In addition, while we agree that the sheriff's office is independent from and not controlled by the county, we conclude today only that the sheriff acts for the State in performing the particular functions at issue in this case.

same way," *id.* at 44, 115 S.Ct. at 402. In this case, the following immunity indicators point against Eleventh Amendment immunity: the sheriff's geographic limitation to a single county, the sheriff's accountability to the electorate of a single county, the state constitution's treatment of sheriffs as county officers and not as state officials, the state's delegation of broad policymaking autonomy to the sheriff as opposed to retaining hands-on control, and the fact that the state has no legal liability and no potential legal liability with respect to judgments against a sheriff. As in *Hess,* the functions of the sheriff "are not readily classified as typically state or unquestionably local." *Id.* at 45, 115 S.Ct. at 403. Both states and municipalities engage in law enforcement activities, and in particular in the jailing function.

In my judgment, the second Eleventh Amendment immunity factor – control – is the only one of the four indicators[1] that might provide some support for the majority

[1] With respect to the first indicator – how the state defines the Sheriff's Office with respect to the jail function – I agree with most of what Judge Barkett says in her dissent. *See* Barkett, J., dissenting, at Part I. With respect to the third indicator – the source of defendant's funding – I again agree with most of what Judge Barkett has written. *Id.* at Part III. With respect to the fourth indicator – the state's liability for adverse judgments – no one has suggested that the state would be liable, and thus this most important factor, this core concern of the Eleventh Amendment, points strongly against immunity. In other words, I agree with most of what Judge Barkett has written, but I specifically decline to join her implication that the county governing body would bear § 1983 liability for actions of the sheriff. All we need decide in this case is that the sheriff is not an arm of the state; we need not decide the county's liability *vel non.*

position.[2] Even assuming *arguendo* that there are immunity indicators pointing in different directions, the Supreme Court has given us clear guidance in such situations: "When indicators of immunity point in different directions, the Eleventh Amendment's twin reasons for being remain our prime guide." *Hess,* 513 U.S. at 47, 115 S.Ct. at 404. The first of the twin reasons asked whether it would be "disrespectful" or a "threat to the dignity" of the state to require the state to answer the complaint in federal court. Of course, it is well established that an identical claim against a city or a county – *i.e.,* Manders' § 1983 excessive force claim for violating the Eighth Amendment by beating him while in jail – would not be barred by Eleventh Amendment immunity. I see no greater threat to the dignity of the state in the instant suit against the Sheriff of Clinch County.

The second of the twin reasons which the Supreme Court in *Hess* held should guide us is what the Supreme Court characterized as "the *impetus* for the Eleventh Amendment: the prevention of federal-court judgments that must be paid out of a State's treasury." *Id.* at 48, 115 S.Ct. at 404 (emphasis added). The Supreme Court also characterized this state treasury factor as "the Eleventh Amendment's core concern," *id.* at 51, 115 S.Ct. at 406, and cited with approval the fact that the vast majority of the circuits have concluded that the state treasury factor

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[2] Ultimately, I believe even the control factor fails to offer much support for the majority position. The control exercised by the state is simply too indirect and too limited. See brief discussion below, and the fuller discussion in Barkett, J., dissenting, Part II.

is "the most important factor" to be considered. *Id.* at 49, 115 S.Ct. at 405.[3]

In applying this analysis, the Supreme Court expressly discounted the significance of the control factor, stating in relevant part:

> But ultimate control of every state-created entity resides with the State, for the State may destroy or reshape any unit it creates. "[P]olitical subdivisions exist solely at the whim and behest of their State," yet cities and counties do not enjoy Eleventh Amendment immunity.

Id. at 47, 115 S.Ct. at 404 (citation omitted). Even more significant, the Court held:

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[3] Following *Hess,* the cases have uniformly continued to consider the state treasury factor as dominant. *See Vogt v. Board of Comm'rs,* 294 F.3d 684, 689 (5th Cir. 2002) (following *Hess,* "[the] most significant factor in assessing an entity's status is whether a judgment against it will be paid with state funds") (citation omitted); *Streit v. County of Los Angeles,* 236 F.3d 552, 567 (9th Cir. 2001) (applying *Hess,* whether state is financially liable for judgment against sheriff's office for operation of county jail is "the most important factor in identifying an arm of the state"); *Harter v. Vernon,* 101 F.3d 334, 338-39 (4th Cir. 1996) (observing, in holding that North Carolina sheriff and deputies are not immune, that "when the state treasury will not pay the judgment . . . the most salient factor in Eleventh Amendment decisions weighs against a finding of immunity") (internal quotes omitted); *Sonnenfeld v. Denver,* 100 F.3d 744, 749 (10th Cir. 1996) (citing *Hess,* "[t]he most important factor in determining whether a governmental entity is entitled to Eleventh Amendment immunity is whether a judgment against it would be paid from the state treasury."); *Christy v. Pennsylvania Turnpike Comm'n,* 54 F.3d 1140, 1145, 1149-50 (3rd Cir. 1995) (quoting *Hess,* "the most important factor is whether a judgment against the entity in question . . . would be paid out of the state treasury," and holding that there was no Eleventh Amendment immunity despite considerable state control) (internal quotes omitted).

> Moreover, rendering control dispositive does not home in on the impetus for the Eleventh Amendment: the prevention of federal-court judgments that must be paid out of a State's treasury.

Id. at 48, 115 S.Ct. at 404. The fact that the control factor was discounted in *Hess* is particularly significant for the instant case because the state control in *Hess* was much more direct and significant than the control exercisable by the state in the instant case. At issue in *Hess* was the Eleventh Amendment status of a bi-state port authority. The governing body of the port authority, twelve commissioners, were appointed, six by each state. *Id.* at 36, 115 S.Ct. at 399. Any vote or action by the commissioners was subject to a veto by the governor [sic] their respective states. *Id.* at 37, 115 S.Ct. at 399. Other control was exercisable by the state legislatures. *Id.* In *Hess,* in other words, there was direct control over any and all decisions. On the other hand, the state control in the instant case is clearly indirect. It includes delegations of authority; it provides for general standards and inspections; it reserves for the Governor the power to temporarily suspend a sheriff for specified misconduct or incapacity, and participation in the process of removal from office, again for specified misconduct or incapacity. Moreover, the state control in the instant case is either equally applicable to city and county jails, or analogous to state control over other local officers. In short, the state control here is precisely the kind of indirect and ultimate control which the Supreme Court in *Hess* discounted as being reserved by the state with respect to every state-created entity. *Id.* at 47, 115 S.Ct. at

404 ("But ultimate control of every state-created entity resides with the State.").[4] Thus, if state control was not sufficient to warrant Eleventh Amendment immunity in *Hess,* I cannot conclude that it is in the instant case.[5] I respectfully submit that the opinion for the court overemphasizes the control factor and underemphasizes the state treasury factor. With respect to the latter, it is clear that the state treasury is not obligated to pay adverse judgments against the sheriff. In this respect too, the instant case is even clearer than *Hess.*[6]

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[4] Justice O'Connor's dissent in *Hess* would have placed greater weight on the control factor, but only on "real, immediate control and oversight, rather than on the potentiality of a State taking action to seize the reins." *See id.* at 62, 115 S.Ct. at 411 (O'Connor, J., dissenting). It is doubtful that the state's control in the instant case would satisfy Justice O'Connor's standard.

[5] Although the control factor is relevant both in the policymaker inquiry for § 1983 purposes and in the Eleventh Amendment inquiry, control is a more significant factor in the § 1983 inquiry. *Compare Turquitt v. Jefferson County, Alabama,* 137 F.3d 1285, 1292 (11th Cir. 1998) (en banc) ("Local governments can never be liable under § 1983 for the acts of those whom the local government has no authority to control.") *with Hess,* 404 U.S. at 47-48, 115 S.Ct. at 404 (discounting the control factor as above discussed). For this reason, as well as the primacy for the Eleventh Amendment of the state treasury factor, the § 1983 caselaw should be used only cautiously in an Eleventh Amendment analysis.

[6] Nothing in *Regents of the Univ. of Calif. v. Doe,* 519 U.S. 425, 117 S.Ct. 900 (1997), suggests a contrary result here. In *Doe,* the Court framed the core Eleventh Amendment question as whether an adverse judgment would expose the state to "potential" legal liability, even if some coverage mechanism existed to indemnify the state against actual liability. *Id.* at 431, 117 S.Ct. at 904. There is no suggestion here that the state is liable for judgments against sheriffs in any fashion, real or potential.

In sum, I submit that, at best, the other immunity indicators point in different directions. As in *Hess,* we should therefore look to the "twin reasons" for guidance. I submit that these reasons point against Eleventh Amendment immunity, and indeed more strongly so than in *Hess.*

In addition to the inappropriate emphasis discussed above, I also respectfully disagree with the opinion for the court in another respect. In my judgment, it asks the wrong question. It asks who has the most control, the state or the county. I submit that the proper question is whether the sheriff has carried his burden of proving that he is an arm of the state. In other words, the issue is not the state versus the county; rather, the issue is whether the sheriff is an arm of the state *vel non.* The mere fact that the sheriff is not the policymaker for the county commission, is not controlled by the county commission, and the fact that the county has no *respondeat superior* liability for judgments against the sheriff, do not, either singly or in combination, go very far toward establishing that a Georgia sheriff is an arm of the state. The Seventh Circuit recognized this in *Franklin v. Zaruba,* 150 F.3d 682 (7th Cir. 1998). There, in holding that an Illinois sheriff was not entitled to Eleventh Amendment immunity, the court said:

> According to defendants, if sheriffs in Illinois are not agents of the county for purposes of holding the county liable under *respondeat superior,* then sheriffs must therefore be agents of the state. This argument overlooks a crucial third possibility . . . – namely, that the sheriff is an agent of the county sheriff's department, an independently-elected office that is not subject to the control of the county in most respects.

Id. at 685. The court held that the fact that "the county is not liable under *respondeat superior* for the actions of the sheriff does not necessarily entail that the sheriff must necessarily be an agent of the state." *Id.* at 686. Similarly, in *Hess,* there was no attempt to assign responsibility for the bi-state authority to some level of government other than the state. It was sufficient there, as it should be here, to say that defendant is not an arm of the state.

For the foregoing reasons, I respectfully dissent.

BARKETT, Circuit Judge, dissenting, in which TJOFLAT, BIRCH and WILSON, Circuit Judges, join, and in which ANDERSON, Circuit Judge, joins in part:

Willie Santonio Manders sued Clinch County Sheriff Winston Peterson under 42 U.S.C. § 1983 for injuries Manders sustained when officers under Sheriff Peterson's supervision struck him repeatedly in the face and bashed his head against a wall in the Clinch County Jail. According to Manders's deposition testimony, the beating he sustained upon his arrival at the county jail eventually resulted in his admission to a mental hospital.

In Georgia, county jails such as the one where Manders was held are quintessentially local institutions that exist separate and apart from the state's integrated system of prisons. Their operation is among the responsibilities of the county and, specifically, the county sheriff. Longstanding authority clearly establishes that local governments such as counties may be held liable under 42 U.S.C. § 1983 for policies they adopt or customary practices they tolerate in operating local governmental facilities. *See Jinks v. Richland County,* 123 S.Ct. 1667, 1673

(2003) (unanimous opinion); *Monell v. New York City Dep't of Social Servs.*, 436 U.S. 658 (1978).[1] In the past, therefore, plaintiffs such as Manders could be confident that violations of their constitutional rights in county jails would not go unremedied.

Today, however, the majority badly subverts the law of local governmental liability by holding that county sheriffs in Georgia act for the state, and thus are immune from suit by operation of the Eleventh Amendment, when they exercise policy-making authority over county jails. It reaches this conclusion by determining that even if Sheriff Peterson's policies were responsible for inmate Manders's beating, Peterson adopted these polices not in his role as jailer, but in carrying out the previously unknown "functions" of "establishing use-of-force policy at the jail and . . . training and disciplining his deputies in that regard." Majority Opinion at 2.

When confronted in the past with § 1983 claims based on a jail inmate's treatment while in custody, we have always defined the relevant function as "operating a county jail." *See Turquitt v. Jefferson County,* 137 F.3d

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[1] Thus we and our sister circuits have previously held, correctly in my view, that claims against sheriffs in their official capacity for constitutional violations at county jails are claims against the relevant county. *See, e.g., Wayne v. Jarvis,* 197 F.3d 1098, 1105 (11th Cir. 1999) (stating that jail inmate's § 1983 "claim against Sheriff Jarvis in his official capacity is a claim against DeKalb County"); *see also Streit v. County of Los Angeles,* 236 F.3d 552, 564 (9th Cir. 2001); *DeGenova v. Sheriff of DuPage County,* 209 F.3d 973, 977 (7th Cir. 2000); *Doe By and Through Doe v. Washington County,* 150 F.3d 920, 923-24 (8th Cir. 1998); *Dotson v. Chester,* 937 F.2d 920, 934 (4th Cir. 1991); *Blackburn v. Snow,* 771 F.2d 556, 571 (1st Cir. 1985).

1285, 1288 (11th Cir. 1998) (*en banc*); *see also Marsh v. Butler County,* 268 F.3d 1014, 1028 (11th Cir. 2001) (*en banc*) (quoting *Turquitt*); *Lancaster v. Monroe County,* 116 F.3d 1419, 1428 (1997). This has been our practice for good reason. The point of identifying the pertinent governmental function in each case is to keep our analysis focused on the discrete set of positive state law authorities that define the particular area of official responsibility at issue. *Cf. McMillian v. Monroe County,* 520 U.S. 781, 786 (1997) (requiring analysis of the "particular area" at issue and contrasting it with a "categorical, 'all or nothing'" approach); *City of St. Louis v. Praprotnik,* 485 U.S. 112, 125 (1988) (expressing confidence that state law will provide sufficient guidance when inquiry is focused on a "given area of a local government's business"). This analytical purpose is inevitably frustrated if the notion of function is conflated with what is more properly deemed a general attribute of the defendant's office, incidental to a range of official functions. Once our inquiry becomes tied to an attribute that is at issue in a variety of contexts, we face the danger of a sprawling inquiry spanning the whole corpus of state law.

Such is the case here. At bottom, the majority's newly invented "function" is nothing more than the sheriff's lawful authority to use force. This power is implicated, at a greater or lesser degree of remove, in virtually all of a sheriff's areas of official responsibility. It is not a function but rather a general attribute of the sheriff's office.

By defining "function" in its unprecedented fashion, the majority dispenses with the guidance to be found in

Georgia statutes clearly directing that Sheriff Peterson manages the Clinch County Jail for Clinch County.[2] It then fails to locate any equally clear authority addressing the question we must decide today. No guidance is to be found in the statute identifying circumstances under which sheriffs may deploy force, because this enactment establishes only that the same authority extends to state *and local* governmental actors alike. *See* Ga. Code Ann. § 17-4-20(d) (prohibiting either a "law enforcement agency of this state *or of any political subdivision of this state*" from limiting peace officers' authority to use force) (emphasis added); *Perry v. State,* 419 S.E.2d 922, 924 (Ga. Ct. App. 1992) (defining scope of sheriff's arrest power by way of Ga. Code Ann. § 17-4-20). Instead, the majority rifles through the rest of the Georgia Code, drawing indirect inferences from statutes addressing everything from registration of bail-bond sureties to execution of court process. In the course of its effort to integrate these state laws into a sort of unified theory of Georgia sheriffs, the majority deploys two arguments that misstate the law and have implications of tremendous breadth.

First, the majority suggests that sheriffs are entitled to Eleventh Amendment immunity because their authority to use force is conferred by the state. *See* Majority Opinion

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[2] Since 1863, the Georgia Code has provided that sheriffs are "Jailers of the counties." Ga. Code § 331 (1863). Today, it provides that "sheriffs are jailers of the counties and have the authority to appoint other jailers, subject to the supervision of the county governing authority." Ga. Code Ann. § 42-4-1(a) (1997). Moreover, it is counties that have the "physical custody" of inmates in their jails and are therefore bound to "maintain" them, as by furnishing "food, clothing, and any needed medical and hospital attention." *Id.* § 42-5-2(a).

at 29. This logic marks a blatant end-run around our function-by-function approach. As the majority itself points out, sheriffs may exercise force "in initial arrests, in subduing inmates in sessions of state superior courts, or in quelling disruptive inmates in county jails." *Id.* If sheriffs are state agents simply because their authority to use force originates in state law, then it must be they act as state agents whenever engaged in a capacity that requires the deployment of force – which is to say, in virtually every function sheriffs have traditionally served.

Even more radically, this argument implies that Eleventh Amendment immunity extends beyond sheriffs to city police officers, county police officers, and even private security guards. All of these individuals, from the Chief of the Atlanta Police Department to the employee keeping watch over the cosmetics aisle of a department store, act on authority vested in them by state law when using force to effectuate arrests for violations of state law. *See Allen v. City of Atlanta,* 510 S.E.2d 64, 66 (Ga. Ct. App. 1998) (striking down city police department's policy governing officers' discharge of their firearms on basis of conflict with Ga. Code Ann. § 17-4-20); Ga. Code Ann. § 36-8-5 (authorizing arrest by county police); *id.* § 17-4-60 (authorizing arrest by private parties); *Cash v. State,* 221 S.E.2d 63, 64 (Ga. 1975) (approving store security officer's arrest of shoplifter). Yet it is settled law that city police, county police, and security guards hired by private entities are not entitled to Eleventh Amendment immunity. *City of Canton v. Harris,* 489 U.S. 378, 388 (1989); *Pembaur v. City of Cincinnati,* 475 U.S. 469, 473-74, 484-85 (1986); *Farred v. Hicks,* 915 F.2d 1530, 1532-33 (11th Cir. 1990). The majority proffers no test to distinguish these officers

and individuals from the county sheriffs whose exercise of force it newly designates a state function.[3]

The second untenable argument offered by the majority is that the sheriff is entitled to Eleventh Amendment immunity simply because the General Assembly defines the powers and duties of his or her office. Yet on this theory of what makes a public office an "arm of the state" immune from suit, *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle,* 429 U.S. 274, 280 (1977), there can be no such thing as local government, because all local government is by definition a creature of the state's authority to attach powers and duties to particular offices. Indeed, as I shall discuss at greater length below, the Georgia Constitution authorizes the state legislature to define the powers and duties of the very officials most readily associated in Georgia with policy-making on behalf of local governments: county commissioners. To hold that county commissioners

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[3] To be sure, the majority endeavors to articulate such a distinction by stating that "[a] city delegates and exercises its policing function through its city police officers and a county through county police officers," whereas "the State delegates and performs certain state policing and corrections functions through several law enforcement agencies, including sheriffs. . . ." Majority Opinion at 30 n.35. This purported distinction presupposes an answer to the very question at issue in this appeal, namely, whether county sheriffs in Georgia act for the state. Because the analysis by which the majority reaches its affirmative answer rests in part on an attribute common to all peace officers in Georgia – namely, the conferment by state law of a power to effect arrests by force – it would seem to follow that not only sheriffs but also city and county police officers could be regarded as state actors. Apparently this is not so. While the majority's distinction escapes me, I certainly agree that city and county police officers do not generally act as arms of the state, and thus I am reassured by today's promise that the "hypothetical scenarios" raised by the majority's reasoning will remain, after all, merely hypothetical. Majority Opinion at 30 n.35.

are entitled to Eleventh Amendment immunity plainly flouts established law. Nonetheless, this is precisely what the majority implies today.

In the end, identifying "force policy" as the function at issue in this case so broadens the inquiry required in applying the Eleventh Amendment that the majority's opinion becomes a largely *ad hoc* survey of the Georgia Code. When we instead recognize jail operation as the proper focus of our inquiry, every relevant factor straightforwardly weighs against the conclusion that Sheriff Peterson, in carrying out this function, acts as an "arm of the state" such that the Eleventh Amendment immunizes him from suit in federal court.

I. DEFINITION OF SHERIFF'S OFFICE AND JAILS UNDER STATE LAW

The first factor relevant in our application of the Eleventh Amendment is how state law defines the entity or official sued as a defendant. We have previously found this factor to favor holding a sheriff unprotected by the Eleventh Amendment when the state constitution, as interpreted by the state supreme court, established that the "sheriff is a 'county official' and, as such, is an integral part of the 'county.'" *Hufford v. Rodgers,* 912 F.2d 1338, 1341 (11th Cir. 1990) (citation omitted).

The Georgia Constitution is unequivocal in its designation of sheriffs as "county officers." Ga. Const. art. 9, § 1, ¶ 3. I have discussed the relevant provision and its history at some length in *Grech v. Clayton County,* ___ F.3d ___ (Barkett, J., concurring). Rather than revisit that discussion in full, I here note simply that the language, structure, and history of the Georgia Constitution overwhelmingly demonstrate an

intent on the framers' part to ratify more than one hundred years of Georgia case law recognizing the sheriff's independence from state lawmakers. Indeed, the drafters resoundingly rejected a suggestion that would have given the state legislature the power to decide whether the sheriff's office would exist and by whom it could be filled. *Id.* at 10 n.8 (Barkett, J., concurring). This designation of sheriffs as independent county officers militates against considering them arms of the state in *any* of their official functions.

With respect to the particular sheriff's function we must consider in this case, statutory law defining jails as county institutions perfectly complements the constitution's definition of the sheriff's office. "By virtue of their offices, sheriffs are jailers of the counties and have the authority to appoint other jailers, subject to the supervision of the county governing authority, as prescribed by law." Ga. Code Ann. § 42-4-1(a). A county "having the physical custody of an inmate" has the responsibility:

> to maintain the inmate, furnishing him food, clothing, and any needed medical and hospital attention; to defend any habeas corpus or other proceedings instituted by or on behalf of the inmate; and to bear all expenses relative to any escape and recapture, including the expenses of extradition.

Id. § 42-5-2(a). As governmental units charged with the custody of persons accused of crimes, counties maintain their jails through the efforts of their sheriffs. In performing this function, sheriffs cannot be decreed the arms of the state.

In order to reach a contrary conclusion, the majority finds it necessary to set aside the Georgia Constitution's general characterization of sheriffs as county officers and the Georgia Code's identification of jails as county institutions. To this end, it deploys its novel concept of "function" to distinguish the present case from one involving the duties specifically enumerated in Section 42-5-2(a), namely, "feeding, clothing, or providing medical care to inmates." Majority Opinion at 29. In the majority's view, these duties and the sheriff's broader responsibility "to maintain" inmates are not implicated in this case because here we must consider not jail operation *per se,* but rather "Sheriff Peterson's force policy, which happens to be at issue in the jail context. . . ." *Id.* at 30. A focus on "force policy," however, does not identify any state law that illuminates the state or local character of this "function" as clearly as do statutes vesting counties with responsibility for jails. Rather, as already discussed, the Georgia statute authorizing sheriffs to use force sheds no light whatsoever on whether the sheriff acts for the state or the county in doing so.

The majority compensates for this lack of direct guidance by turning to "the specific duties the State assigns to sheriffs," "most" of which it regards as "integral" to the "State's criminal justice system." *Id.* at 28-29. In this connection, the majority discusses "state court and bond-related duties," *id.* at 20, as well as "the common law duties of sheriffs to enforce the laws and preserve the peace on behalf of the sovereign State." *Id.* at 15.[4] The

[4] The majority also points to sheriffs' duty to detain certain prisoners in county jails for a limited period after they have been

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problem with this approach is that law enforcement, court, and bond-related duties have nothing to do with the function at issue in this case, even on the majority's definition of that function as "establishing use-of-force policy at the jail." The beating to which Manders alleges he was subjected was neither connected with his arrest, which had already been effected by the time he entered the Clinch County Jail, nor incident to his transport to or from a courtroom.[5]

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committed to state custody. Majority Opinion at 30; *id.* at 23-24. Assuming for purposes of argument that to this extent state law does define sheriffs as "arms of the state," the point has little force in this case. First of all, Manders was not committed to state custody at any point during his detention at the Clinch County Jail. Second, the special categories of prisoners discussed by the majority – consisting mainly of persons appealing conviction, awaiting imposition of suspended sentence, or serving previously probated sentences revoked on the basis of minor offenses – are clearly minor exceptions to the general rule. In operating a jail, the sheriff exercises custody primarily over pretrial detainees and persons convicted of misdemeanors. With respect to these much broader categories of prisoner, it is the county rather than the state that is responsible for the detention and well-being of persons in the sheriff's custody. Ga. Code Ann. § 42-5-51. I discuss below the one other category of prisoners specially singled out by the majority: persons whom the Georgia Department of Corrections temporarily pays counties a *per diem* fee to house due to overcrowding in state prisons. *See infra* note 11.

[5] Remarkably, the majority goes so far as to suggest at one point that detaining accused criminals is always and everywhere a "state function" whenever offenders are charged with "state felonies." *See* Majority Opinion at 27 n.33. The reasoning appears to be that the enactment of state laws defining felony offenses makes all persons charged with the commission of a felony "state offenders," and accordingly entitles their custodians to Eleventh Amendment protection from at least some suits. This infirm logic marks a variation on the argument that Sheriff Peterson is entitled to Eleventh Amendment immunity whenever he exercises his authority under state law to use force in

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Hence the majority's refusal to recognize jail operation as the pertinent function in this case ultimately becomes a license to dispense entirely with the function-by-function approach we apply in deciding claims of Eleventh Amendment immunity. Instead, the majority offers an *ad hoc* collection of Georgia laws pertaining not to jail operation, nor even to the function it has newly invented, but rather to the sheriff's "essential governmental nature."[6] Majority

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making arrests. Just as the majority's reliance on Georgia's use-of-force statute implies that every sheriff, city police officer, and store security guard must be a state actor, so its discernment of a "state function" from the mere existence of state penal codes implies that every one of this country's jails, detention units, and holding cells must be a state institution. That implication defies the longstanding amenability of local governments to suit for violating the constitutional rights of persons held in local jails on state charges. *See, e.g., Jinks,* 123 S.Ct. at 1673 (stating that claim arising out of prisoner's death in county detention facility lay against "a political subdivision" of the state, rather than state itself, when prisoner had been arrested for failing to pay child support); *Goodson v. City of Atlanta,* 763 F.2d 1381, 1387-88 (11th Cir. 1985) (upholding award of $45,000 in damages against city of Atlanta for conditions of confinement suffered by plaintiff while detained in Atlanta City Jail on charge of rape).

[6] Plainly baffling, then, is the majority's charge that this dissent, in taking jail operation as the pertinent function, "defines the Sheriff's conduct at a higher level of abstraction" than the majority itself. Majority Opinion at 8 n.9. Divination of the sheriff's "essence" would seem to involve abstraction of a very high order. By contrast, the concrete function of jail operation focuses our inquiry on positive state legal authority directly relevant to this case, namely, the Georgia statute that makes sheriffs "jailers of the counties." Ga. Code Ann. § 42-4-1(a).

The majority recognizes that counties may be liable for constitutional deprivations arising out of certain aspects of jail administration. *See* Majority Opinion at 34, 36 & n.43 (distinguishing Manders's suit from one involving provision of "food, clothing, and any needed medical and hospital attention" to jail detainees, as required under Ga. Code Ann. § 42-5-2(a)). While I agree with the majority that counties are

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Opinion at 28. This looks very much like the "all or nothing" approach against which the Supreme Court has warned. *See McMillian,* 520 U.S. at 785 (instructing that the question of whether a sheriff acts for the county or state requires attention to the sheriff's role "in a particular area, or on a particular issue").

The majority also seeks to minimize the importance of statutes making sheriffs responsible for county jails by emphasizing that this responsibility devolves upon sheriffs by way of state law. *See* Majority Opinion at 21 (discussing statutory and doctrinal authority establishing that sheriff is required by law to administer jails). In this connection, it contrasts the General Assembly's authority to enact legislation pertaining to sheriffs, *see* Ga. Const. art. 9, § 1, ¶ 3(a), with the county commission's lack of authority to enlarge or restrict the sheriff's charge.[7] *See* Ga. Const. art.

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responsible for providing prisoners with these basic necessities, I believe their responsibility extends much more broadly to all aspects of operating county jails.

[7] The majority likewise emphasizes Georgia cases stating that the sheriff is "not an employee *of the county commission.*" *Wilson v. Board of Comm'rs of Randolph County,* 396 S.E.2d 903, 903 (Ga. 1990) (emphasis added); *see also Boswell v. Bramlett,* 549 S.E.2d 100, 102 (Ga. 2001) (explaining that employees of "constitutionally elected officers of a county," such as sheriffs, are not employees of the county "as represented by the local governing authority"). It then reads this authority for the very different rule that the sheriff is not an employee *of the county.* Majority Opinion at 29. That interpretive leap finds no support in Georgia law. As I discuss below, *see infra* note 15, Georgia law establishes that sheriffs are constitutional county officers independent of county commissions. This independence does not unfasten sheriffs from local government, but rather vests them with final policy-making authority over those county functions entrusted to their office. That sheriffs are not employees of county commissions reflects nothing more than this separation of powers.

9, § 2, ¶ 1(c)(1). The General Assembly's authority to alter the powers and duties attaching to the sheriff's office, however, indicates nothing more than its role as the seat of legislative power in Georgia. Put another way, the Assembly's general authority to define the sheriff's office is a separate matter from our present concern with whether the laws it has enacted do in fact define the sheriff as an arm of the state.[8]

The majority's neglect of this distinction is at the core of an argument that proves far too much. Not only sheriffs but all forms of "elective county office" are subject to the state's sovereign prerogative to structure local government. Ga. Const. art. 9 § 2, ¶ 1(c)(1); *see also, e.g.,* Ga. Code Ann. § 36-64-5 (requiring that local parks boards established by "the governing body of any county or municipality . . . shall consist of a minimum of five persons

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[8] The majority explicitly recognizes that "ultimate control of every state-created entity resides with the State and that the State may destroy or reshape any political subdivision as it sees fit." Majority Opinion at 35 n.41. It then maintains that this elemental form of state sovereignty is not the sole basis for its conclusion that Georgia law defines Sheriff Peterson as a state officer. Yet the majority's discussion relies first, foremost, and throughout on the clauses of the Georgia Constitution cited above, which provide simply that (1) the state's General Assembly may legislate on matters pertaining to the elective county office of sheriff and (2) county commissions may not so legislate. *See* Majority Opinion at 10 (citing Ga. Const. art. 9, § 1, ¶ 3(a), which provides that sheriffs, along with other county officers, "shall have such qualifications, powers, and duties as provided by general law"); *id.* at 11, 13, 37-38 (citing Ga. Const. art. 9, § 2, ¶ 1(c)(1), which provides that county commissions' powers "shall not be construed to extend to . . . [a]ction affecting any elective county office"). Those provisions do no more than articulate, with respect to elective county offices, precisely the elemental form of state sovereignty which the majority insists is not the basis of its argument.

and a maximum of nine persons, serving without pay," and that generally the "terms of office of the members of the board shall be for five years"); *id.* § 36-74-5 (setting forth requirements for appointment, membership, compensation, and organization of local code enforcement boards). This is true of local government not only in Georgia but across this country. *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 47 (stating that "political subdivisions exist solely at the whim and behest of their State" (internal quotation and alteration marks omitted)); *City of Trenton v. New Jersey*, 262 U.S. 182, 187 (1923) ("A municipality is merely a department of the state, and the state may withhold, grant or withdraw powers and privileges as it sees fit." (footnote and citation omitted)).

Indeed, the General Assembly may enlarge or contract the powers and duties not only of the sheriff, but also of the very institution most readily conceived as a repository of local policy-making authority in Georgia: the county governing authority, which in Clinch County is its board of commissioners. *See* 1933 Ga. Laws § 29, p. 467. Article Nine of the Georgia Constitution, which vests county commissioners with certain "home rule" powers, makes clear that this delegation "shall not restrict the authority of the General Assembly by general law to further define this power or to broaden, limit, or otherwise regulate the exercise thereof." *See* Ga. Const. art. 9, § 2, ¶ 1(a). Accordingly, the General Assembly has created numerous duties on the part of commissioners. County commissioners must satisfy minimum training requirements, avoid conflicts of interest when purchasing goods and property for the county, and comply with certain disclosure and recusal rules when zoning actions come before them. *See* Ga. Code Ann. §§ 36-20-4, 36-1-14, 36-67A-2. Myriad other duties

structure the county commission's collective discharge of official functions. *See, e.g., id.* § 36-1-25 (requiring that official minutes be kept of all meetings); *id.* § 36-67-3 (requiring that official review of zoning proposals address six statutorily specified matters); *id.* § 36-9-3 (requiring that sales of real property be made to "the highest responsible bidder, either by sealed bids or by auction after due notice has been given"). Finally, the matters over which county commissions exercise legislative powers are those which state law entrusts to the counties' home rule authority. *See Stephenson v. Board of Comm'rs of Cobb County,* 405 S.E.2d 488, 489 (Ga. 1991); *Mobley v. Polk County,* 251 S.E.2d 538, 541 (Ga. 1979) ("Neither the counties of this state nor their officers can do any act, make any contract, nor incur any liability not authorized by some legislative act applicable thereto.").

If the enactment of laws making sheriffs responsible for jails entitles the sheriff to Eleventh Amendment protection, a logical inference is that state laws imposing duties on county commissioners likewise bring these locally elected representatives within the amendment's ambit. This is a result starkly in opposition to the line of precedent holding that local governments are not entitled to sovereign immunity under the Eleventh Amendment. *See Mt. Healthy,* 429 U.S. at 280; *Lincoln County v. Luning,* 133 U.S. 529, 530 (1890). It likewise undermines the rule that local governments may be liable under § 1983 for policies or customary practices that deprive individuals of federal rights. *Monell,* 436 U.S. at 690-91. The majority fails to reckon with this opposition between established law and its argument that the mere existence of state laws tasking sheriffs with specific duties favors Eleventh Amendment immunity.

In sum, the majority's designation of "force policy" as the function to consider in this case culminates in a fatally flawed analysis of how state law defines the defendant. Among the casualties of the majority's misguided discussion are the function-by-function approach that our law compels and the well-established notion that local governmental entities, despite being defined by state law, are independent of the state.

Neither of the infirmities of the majority's approach would arise were operation of a county jail recognized as the appropriate function to consider in this case. Rather, the question of how state law defines the sheriff in carrying out this function readily resolves itself upon consultation of statutes defining Georgia jails as county institutions. The first factor in our analysis thus strongly and unequivocally favors the conclusion that Sheriff Peterson is not, in operating a county jail, an arm of the state entitled to the protection of the Eleventh Amendment.

II. INDEPENDENCE FROM STATE CONTROL IN OPERATION OF COUNTY JAILS

The second factor in our Eleventh Amendment inquiry is the degree of control the state maintains over the defendant. Unlike other correctional facilities in Georgia, which are managed by a state department and overseen by a state board, jails are the exclusive domain of Georgia's scores of county sheriffs, who manage these institutions independently of virtually all state oversight. A proper examination of county jails and sheriffs' role in running them gives no indication of state control.

Georgia's Code specifically charges each county's sheriff with the duty of taking "custody of the jail and the bodies of such persons as are confined therein, along with the warrant or cause of commitment." Ga. Code Ann. § 42-4-4(a)(1). Incident to this fundamental responsibility is the sheriff's obligation to "furnish persons confined in the jail with medical aid, heat, and blankets," *id.* § 42-4-4(a)(2), as well as to commit persons to the jails of nearby counties should the local facility prove unsafe. *Id.* § 42-4-4(a)(3). The counties themselves build the jails operated by their sheriffs. *Id.* § 36-9-5(a).

In contrast, the state maintains a network of correctional facilities that exists separate and apart from jails. This state system encompasses "state correctional institutions" and "county correctional institutions,"[9] both of which are distinct from jails and receive prisoners only after they are convicted. *See id.* §§ 42-5-30; 42-5-53; 42-5-51; *In re Prisoners Awaiting Transfer,* 224 S.E.2d 905, 906 (Ga. 1976). Unlike jails, both state and county correctional institutions must answer to state authorities: their wardens serve at the pleasure of the Georgia Board of Corrections, whose members are appointed by the governor. Ga. Code Ann. §§ 42-2-2(a), 42-5-30.[10] Moreover, such facilities

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[9] Georgia's Code uses the term "county correctional institutions" to refer not to correctional facilities in a generic sense but specifically to work camps that are distinct from county jails and municipal detention units. *See* 1973 Op. Ga. Att'y Gen. 117 (identifying "county correctional institutions" as county public works camps). Sheriff Peterson recognizes the distinction in a brief filed with this Court. *See* Reply Brief of Appellant, Sept. 21, 2001, at 1-2 ("County correctional institutions are entirely different facilities from county jails.").

[10] In the case of county correctional institutions, wardens are appointed by county governing authorities "subject to approval" of the

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operate under the "supervision and control" of the state Department of Corrections, pursuant to rules promulgated by the board. *Id.* §§ 42-2-5, 42-5-53(b); *Wilkes County v. Arrendale,* 180 S.E.2d 548, 549 (Ga. 1971). In exercising this rule-making authority, the Board of Corrections has adopted regulations governing everything from inmates' personal hygiene to the size of disciplinary isolation cells to the frequency of inspections. *See* Ga. Comp. R. & Regs. r. 125-2-3-.04 (hygiene); *id.* r. 125-3-2-.09 (disciplinary facilities); *id.* r. 25-3-1-.04 (inspections).

None of this regulation applies to sheriffs, a key indicator of the state of Georgia's lack of immediate control over sheriffs' exercise of custodial authority in county jails. *See* Ga. Code Ann. § 42-5-51(a) (stating that Department of Corrections "shall have no authority, jurisdiction, or responsibility" with respect to offenders sentenced to confinement in county jails). Although a sheriff who fails to carry out certain statutory responsibilities faces the possibility of fines for contempt or removal from office, *id.* § 42-4-4(c), imposition of these sanctions requires formal proceedings in courts of law. *Gipson v. Bowers,* 434 S.E.2d 490, 491 (Ga. 1993). Accountability to judicial enforcement establishes only that sheriffs' offices in Georgia possess legal personality, not that the state controls the sheriff for purposes of our Eleventh Amendment analysis.

Moreover, whereas the state can order county correctional institutions to take custody of prisoners, it generally lacks authority to house prisoners in county jails without

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board of corrections, and they serve "at the pleasure of the county or the board." Ga. Code Ann. § 42-5-30.

the approval of the local sheriff. The chief administrative officer of the Department of Corrections "may designate as a place of confinement any available, suitable, and appropriate state or county correctional institution in this state operated under the jurisdiction or supervision of the department. . . . Neither male nor female state inmates shall be assigned to serve in any manner in a county jail unless [upon] . . . the approval of . . . the sheriff or the jail administrator of the county." Ga. Code Ann. § 42-5-51(d).[11] State court judges likewise lack authority to compel the sheriff to transfer a prisoner by way of a *sua sponte* determination that a particular jail is insecure. *See In re Irvin,* 328 S.E.2d 215, 218 (Ga. 1985); *Howington v.*

[11] The majority identifies one exception to this categorical statutory command. Under Georgia law and in exchange for a *per diem* fee, sheriffs maintain temporary custody of prisoners whom the Department of Corrections is unable to transfer to state prisons due to overcrowding in these facilities. *See Clayton County v. Evans,* 366 S.E.2d 282, 282-83 (Ga. 1988). Yet the Department of Corrections enjoys no more authority with respect to these inmates' custody than with respect to the sheriff's custody of all other persons confined in county jails. The detailed regulations promulgated for the administration of state prisons remain wholly inoperative. Moreover, the very fact that the department must pay a *per diem* fee in this connection, *see* Ga. Code Ann. § 42-5-51(c), demonstrates that state law does not transform the sheriff maintaining such prisoners into a state agent, but rather continues to recognize jails as local entities with which the state enters into an essentially contractual relationship. *Accord Clayton County,* 366 S.E.2d at 283 (rejecting proposition that prisoners housed in county jail for *per diem* fee "were 'assigned' to serve sentences in the county's jail without the county's approval" and characterizing them instead as "merely temporarily incarcerated in the county jail, with the reimbursement provided by § 42-5-51(c), until such time as space could be made available for their transfer to a state correctional institution"). The arrangement through which state and local authorities in Georgia cooperate for the purpose of relieving overcrowding in state prisons fails to demonstrate that the state exercises control over county sheriffs.

Wilson, 100 S.E.2d 726, 727 (Ga. 1957). By contrast, sheriffs themselves have the authority under certain conditions to commit persons in their custody to jails in adjoining counties. *See* Ga. Code Ann. § 17-7-1.[12]

The most substantial oversight to which Georgia law subjects sheriffs involves not *state* but other *county* officers. The chapter of the Georgia Code titled "Jails" begins with the mandate that "sheriffs are jailers of the counties and have the authority to appoint other jailers, subject to the supervision of the county governing authority." *Id.* § 42-4-1(a); *Griffin v. Chatham County,* 261 S.E.2d 570, 571-72 (Ga. 1979) (citing predecessor provision in upholding county commission's authority to compel sheriff to accept prisoners whom county had agreed to hold in detention). In aid of this supervisory function, county governing authorities have at their disposal the investigative powers of grand juries, *see* Ga. Code Ann. § 15-12-71(c), which must inspect jails annually and make appropriate recommendations to the county commission. *Id.* § 15-12-78. Notably, grand juries regularly advise county commissions with regard to "the treatment of the inmates," *id.* 15-12-78, as well as the jail's general "operations." *Id.* § 15-12-71(b)(1).[13] County oversight of jails in

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[12] Complementing this authority is the obligation of sheriffs to accept prisoners from other counties upon receipt of an advance payment of fees and costs. Ga. Code Ann. § 17-7-2.

[13] The majority characterizes the grand jury's inspection of county jails as incident to the "well-established function of grand juries in the State's justice system." Majority Opinion at 34-35 n.40. That general role is simply immaterial to the present case, which addresses the particular function of jail administration. As the majority acknowledges, grand juries inform county commissions about the "treatment of

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Georgia thus sweeps more broadly than in Alabama. As we explained in *Turquitt,* 137 F.3d at 1289, "Alabama's Constitution sends a clear message that a sheriff is a state officer, whose actions with respect to the well-being of jail inmates are most appropriately controlled by state officials," whereas Alabama counties are primarily responsible only for the jail's "physical plant." *Id.* at 1290. Georgia counties' broader supervisory role complements their correspondingly expansive responsibility to maintain not only the jails themselves but also the inmates in their custody. Ga. Code Ann. § 42-5-2(a). Counties are responsible not only for the health and humane treatment of jail inmates but also for certain costs bearing a more attenuated relationship to the maintenance of custody: they must defend habeas corpus actions and pay for the cost of any escape and recapture of prisoners. *See id.* § 42-5-2(a).

In sum, Georgia has created two different sorts of facilities for the custody of persons detained as a result of alleged or proven crimes. On the one hand is the set of facilities maintained directly by the state for the custody of most convicted felons. On the other are the jails of the state's counties, which exist primarily to hold persons awaiting trial or convicted of minor offenses. The state has integrated its own correctional institutions within a unified system subject to the control of statewide agencies, which direct the appointment and removal of wardens, supervise operations, and decide which institutions will take custody of which prisoners. By contrast, Georgia's county jails exist in relative isolation. Each is run by an

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inmates" generally. The breadth of this advisory function coincides with counties' general responsibility for sheriffs' management of county jails.

independent sheriff under the supervision of a county governing authority, with no institutionalized mechanism for state oversight.[14] The sheriff may generally refuse to house state prisoners, and inasmuch as Georgia law carves out certain exceptions to this rule, it never intrudes upon the sheriffs' independent custody over all persons confined in county jails. Sheriffs exercise this undiluted authority to operate what are indubitably county institutions.

As in its application of the first Eleventh Amendment factor, the majority slights the weight of state laws vesting counties and their sheriffs with authority over jails by relying on its unorthodox definition of "force policy" as the

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[14] The majority seeks to minimize the importance of sheriffs' independence from Georgia's integrated corrections system by remarking that the existence of a statewide Department of Corrections "does not preclude the State from [also] utilizing other law enforcement agencies, such as sheriffs, to perform the State's incarceration function for state offenders." Majority Opinion at 27 n.33. Be this as it may, the only reason given by the majority for regarding Sheriff Peterson as acting for the state at all, with respect to prisoners such as Willie Manders, is its pronouncement that sheriffs engage in a state function whenever they detain persons charged with felonies. *Id.* As discussed above, however, the operation of county jails cannot be regarded as a state function merely because the elements of felony offenses are found in state penal codes. *See supra* note 5. Even were this mistaken premise conceded, the relevant point with respect to the *control factor* would remain that county sheriffs discharge a "State[ ] incarceration function" independently of the only state agency with supervisory authority over state correctional facilities. Thus, the control factor would continue to militate against the extension of Eleventh Amendment immunity. The majority's elision of this point ultimately consists in the argument that because sheriffs (1) exercise independent custodial authority and (2) are state actors, their own independence – their self-control, if you will – should be considered "state control." The belabored tautology of this reasoning is less than illuminating with respect to our present inquiry.

"function" at issue in this case. Thus it characterizes Georgia counties' obligations with regard to "the jail structure and . . . food, clothing, and medical necessities" as involving "wholly separate and distinct matters" from the function involved in this case. *See* Majority Opinion at 34. After executing this maneuver, however, the majority once again fails to cite any law by which the state does control sheriffs with respect to the "force policy" function the majority has newly defined. Instead, the majority rests its application of the control factor on the observations that sheriffs must undergo training coordinated by a statewide association of sheriffs and the governor may suspend sheriffs for up to 90 days.[15] These points cannot bear the weight assigned them.

With respect to training, the majority must rely on hypothesis to relate its discussion to "force policy" at all. Sheriffs are required to undergo twenty hours of training

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[15] Apart from its argument that training requirements and the state's limited suspension power establish state control, the majority muddies its analysis by trying to establish the complementary proposition that Georgia counties have no control over the function at issue in this case. Majority Opinion at 34. Since Sheriff Peterson is himself an independent county officer under Georgia's Constitution, the only way to make sense of this assertion is to read it as premised on the county commission's lack of control over the sheriff.

As I have explained in my concurrence in *Grech*, ___ F.3d ___, however, the county commission is not the only institution that acts for the county. Georgia has structured its county governments to vest authority for different functions in different, coequal offices interacting in a manner akin to the federal government's separation of powers. Thus, the sheriff's independence from the county commission should be interpreted not as independence *from the county,* but rather as *independent authority to act for the county* with respect to the functions entrusted his office.

"generally devoted to contemporary law enforcement, investigation, judicial process, and correction practices." Ga. Code Ann. § 15-16-3(a), (e)(1). The lack of more specific authority notwithstanding, the majority decrees it "reasonable to assume" that this training "includes instruction on force policy and hiring and training deputies." Majority Opinion at 31-32. Reasonable or not, the control factor may be applied much more straightforwardly by observing simply that the sheriff's custodial responsibility for jails, including the treatment of inmates, is not subject to oversight from state correctional agencies.

The majority's discussion also falters because it cannot be said that sheriffs' training is in fact administered by the state. Rather, the training is overseen by the Georgia Sheriffs' Association, a private organization comprising the state's elected sheriffs. *See* Ga. Code Ann. § 15-16-3(e)(1); *see also* Georgia Sheriffs' Association, Welcome, *at* www.georgiasheriffs.org (last visited Jun. 11, 2003). Given the association's composition, it begs the question presently before us to characterize sheriffs' training as a state-administered program: we are sitting *en banc* for the very purpose of determining whether the sheriffs who design and conduct this training are themselves state or county officials.

Finally, inasmuch as the majority means to assert that the mere existence of a training requirement establishes state control, its approach again proves too much. Not only the sheriff but also holders of the quintessential local governmental office, that of county commissioner, must satisfy a training requirement. *See* Ga. Code Ann. § 36-20-4 (requiring commissioners to complete 18 hours of training on matters pertaining to the administration of county governments). So too must city and county police

officers, *see id.* §§ 35-8-9, 35-8-21, 35-8-2(8)(A) (requiring basic training course prior to service and annual training thereafter), and private lawyers. *See* Ga. St. Bar R. 8-104(A) (setting forth annual continuing legal education requirement for members of bar). Just as the General Assembly may define the powers and duties which attach to local office, it may require that local office-holders and licensed professionals complete courses of training. This exercise of state sovereign authority does not mean that the persons regulated are subject to state "control" such that the Eleventh Amendment should immunize them from suit. The majority fails to reckon with this anomalous implication of its reliance on sheriffs' annual training requirement in applying our second Eleventh Amendment factor.

The other component of the majority's control analysis is its discussion of the Georgia governor's power to suspend county sheriffs. While the governor indeed has the authority to suspend sheriffs by following a statutorily defined procedure, it is not clear why this power should be viewed as more decisive than the limits clearly circumscribing it. For one thing, the governor cannot act unilaterally to *remove* a county sheriff. *See Gipson,* 434 S.E.2d at 491 (stating that "the Governor and the Attorney General can take no official action against a sheriff unless there has been a criminal indictment").[16] Not only do the relevant

[16] The majority distinguishes *Gipson* as a case construing the statute that defines the governor's power to remove any and every public official, rather than the statute conferring a more specific power to temporarily suspend sheriffs. *See* Majority Opinion at 33 n.38. Yet it is undisputed that the governor has no more power to remove sheriffs than any other officials. The majority chooses to ignore this and instead

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statutes vest the governor with no removal power, they also forbid him or her from suspending a sheriff for longer than ninety days. *See* Ga. Code Ann. § 15-16-26(c). Exercise of even this limited suspension power requires the governor to appoint and receive the affirmative recommendation of an investigatory committee, *see id.* § 15-16-26(c), on which county sheriffs themselves constitute a majority. *Id.* § 15-16-26(a). The governor's real but limited suspension power and his lack of removal power are as readily viewed as evidence of a lack of control as of control.

In sum, the majority's flawed conception of the function at issue in this case leads it to ignore a statutory scheme clearly rendering Sheriff Peterson independent from state corrections officials in his administration of the Clinch County Jail. At the same time, the majority's discussion of "force policy" as the relevant function leads it to no comparably illuminating statutory guidance, but rather involves it in flawed or tendentious arguments based on the training program sheriffs must attend and the governor's power to order suspensions of sheriffs for up to 90 days.

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focus exclusively on suspension. As I explain in the text, the significance which the majority assigns the governor's suspension power indicates only its need to rest an otherwise unsupported argument on inferences drawn from a law that could as easily be interpreted to the opposite effect. While the majority seems to fault the Georgia Supreme Court for speaking too broadly when it explained in *Gipson* that the governor "can take no official action against a sheriff" absent criminal indictment, see Majority Opinion at 33 n.38, one might also regard the high court's unanimous agreement upon such categorical language as an indication of the conception of sheriffs held by jurists better trained than we in Georgia law.

III. FUNDS

The third Eleventh Amendment factor is the source of a defendant's funding. Sheriff Peterson's operating budget is appropriated entirely by Clinch County. *See Grech v. Clayton County,* ___ F.3d ___, at 24-25 (citing Ga. Code Ann. §§ 36-5-22.1, 15-16-20, 45-4-7, 15-16-5; *Chaffin v. Calhoun,* 262 Ga. 202, 203 (1992)). The county also appropriates other funds related to the function at issue in this case, namely, the costs of building and operating jails. Ga. Code Ann. §§ 36-9-5, 42-5-2(a).

The majority recognizes that "Clinch County bears the major burden of funding Sheriff Peterson's office and the jail," Majority Opinion at 36, but it nonetheless ventures an argument that the funding factor ultimately "tilt[s]" in favor of Eleventh Amendment immunity. *Id.* at 38. As is true of the majority's application of the other relevant factors, it reaches this conclusion via a route that begins with its mistaken conception of the function at issue in this case. The majority relies on its novel notion of a "force policy" function to set aside statutes requiring counties to pay for the jail's construction, upkeep, and operations. *See* Ga. Code Ann. §§ 36-9-5, 36-9-8, 42-5-2. It then addresses the matter of who funds the sheriff by way of speculation that is highly removed from any positive authority.

Specifically, the majority reprises the same tendentious assumptions and inferences set forth in its application of the control factor. It points out that the state pays for twenty hours of training (which, it assumes, must encompass instruction in the use of force), as well as for any costs incurred in the investigation of sheriffs. Although this funding pertains no more to "force policy" than to any other function of the sheriff's office, the majority

chooses to regard it as particularly pertinent to this case. It does not explain how funds appropriated for a training course of several days and the rare investigation of possible misconduct outweigh the counties' obligation to finance jail construction and then pay all costs of their daily operation and maintenance, year in and year out.

The majority also remarks that counties' funding obligations, including minimum salary and bond requirements, are established under state law. Majority Opinion at 36. These points are immaterial to our application of the funding factor, which addresses simply the origin of an entity's funding, not the law under which funding obligations arise. *See Tuveson v. Florida Governor's Council on Indian Affairs,* 734 F.2d 730, 732 (11th Cir. 1984) (stating relevant question as "where funds for the entity are derived"). In implying a contrary rule, the majority's analysis again conflates the state's authority to structure local governmental entities – as by requiring each county to appropriate funds for a sheriff's office – with the sovereign immunity accorded by the Eleventh Amendment.

Moreover, Georgia courts have recognized that county commissions act autonomously in funding the sheriff's office so long as their appropriations preserve the sheriff's capacity to execute the basic functions of office. *See Chaffin v. Calhoun,* 415 S.E.2d 906, 908 (Ga. 1992). Review of whether this minimum standard has been satisfied is for abuse of discretion, *Board of Comm'rs of Randolph County v. Wilson,* 396 S.E.2d 903, 904 (Ga. 1990), and the cases amply demonstrate counties' authority to make very substantial cuts in sheriffs' funding. *See Chaffin,* 415 S.E.2d at 908 (upholding county commission's reduction of sheriff's budget by 47 percent); *Board of Comm'rs of*

Randolph County, 396 S.E.2d at 904 (upholding commission's decision not to appropriate funds needed to pay deputy's salary); *Lovett v. Bussell,* 249 S.E.2d 86, 86 (Ga. 1978) (upholding commission's decision not to appropriate funds necessary to supplement salaries of six deputies).

Finally, the majority asserts that "Clinch County sets the total budget but cannot dictate how Sheriff Peterson spends it." Majority Opinion at 37. This argument is both inapposite and mistaken. First of all, it conflates the control and funding factors. More importantly, it obscures the only point relevant to our Eleventh Amendment analysis: whatever the extent of county commissioners' control, it is undisputed that the *state* exercises no control whatsoever over the sheriff's expenditures. Finally, the majority wrongly equates the "county," of which Sheriff Peterson and members of the board of commissioners are coequal officers,[17] with the board of commissioners alone. Because Sheriff Peterson is himself a county officer, it is incoherent to say the county "cannot dictate" how his budget is spent.

IV. STATE'S LIABILITY FOR ADVERSE JUDGMENT

The final factor relevant in our analysis is the state's legal liability for a judgment against the sheriff. A showing that the state would be liable for judgment militates with particular force in favor of holding Eleventh Amendment sovereign immunity to protect the defendant from suit in federal court; a showing that the state would not be liable

[17] *See supra* note 15.

cuts strongly against such immunity. *Regents of the Univ. of Cal. v. Doe,* 519 U.S. 425, 430 (1997); *Auer v. Robbins,* 519 U.S. 452, 456 n.1 (1997) (declining to extend Eleventh Amendment immunity to police commission, 80 percent of which was appointed by state governor, because "the city of St. Louis is responsible for the board's financial liabilities" (internal citation omitted)).

Here, the majority is correct in concluding that Georgia law offers no indication that the state would be liable for a judgment against Sheriff Peterson. Majority Opinion at 43. It wrongly concludes, however, that Georgia law also unequivocally protects counties from liability for their sheriffs' actions.

The majority cites a number of cases showing that the state of Georgia has, as a general matter, granted counties immunity from suit on causes of action arising under state law. Notably, it has done so under a statutory provision that stands apart from the enactment defining the state's own immunity. *Compare* Ga. Code Ann. § 36-1-4 *with id.* § 50-21-20 *et seq.* Counties' immunity from many state law causes of action does not render them immune from liability under 42 U.S.C. § 1983 for violations of federal rights. *Howlett v. Rose,* 496 U.S. 356, 376-77 (1990) ("[S]ince the Court has held that municipal corporations and similar governmental entities are 'persons,' a state court entertaining a § 1983 action must adhere to that interpretation. Municipal defenses – including an assertion of sovereign immunity – to a federal right of action are, of course, controlled by federal law.") (citations omitted); *Martinez v. California,* 444 U.S. 277, 284 & n.8 1980) (state law granting immunity to parole officers does not control question whether such officers have immunity under § 1983).

Georgia's own courts have recognized as much. In *Lowe v. Jones County,* 499 S.E.2d 348, 350-51 (Ga. Ct. App. 1998), the court reached the merits of a claim that a sheriff's training policies had violated the federal constitutional rights of the plaintiff's decedent. The plaintiff had named the sheriff and the county as defendants. *Id.* at 349. Thus, simply by reaching the merits, the court treated a § 1983 suit against a county sheriff as not implicating the threshold immunity from suit to which state instrumentalities are entitled under the Eleventh Amendment. The court also stated explicitly that "local governments may be liable" for certain violations of federal rights, thereby conveying the view that a suit arising out of a sheriff's policies implicates the liability of the county, not the state. *Id.* at 350.

Also favoring the conclusion that Clinch County would satisfy a § 1983 judgment against Sheriff Peterson is the authority of county commissions to pay attorney fees incurred by sheriffs in defending civil rights actions in federal court. *See Haywood v. Hughes,* 235 S.E.2d 2, 3 (Ga. 1977). While the majority is correct in pointing out that counties are not required to take this step, no county would have any incentive to defend actions against sheriffs were it true that a judgment would be the responsibility of the state.

While a defendant may be entitled to Eleventh Amendment immunity even when an adverse judgment will not implicate the state's treasury, *Regents of the Univ. of Cal.,* 519 U.S. at 431, liability for judgment remains the single most important factor in our analysis. *Hess,* 513 U.S. at 48-49 (identifying "prevention of federal-court judgments that must be paid out of a State's treasury" as the "impetus for the Eleventh Amendment," and citing

with approval seven court of appeals decisions recognizing "vulnerability of the State's purse as the most salient factor in Eleventh Amendment determinations"). Thus, when the state bears no liability for a defendant's actions, this fact militates with particular force against allowing the defendant to invoke the Eleventh Amendment. For this reason, the authority indicating that Georgia incurs no liability in connection with judgments against county sheriffs simply cannot be ignored.[18] As with the rest of the state law we have examined in this case, the state's non-liability for any judgment against Sheriff Peterson demands that we allow Manders's suit to proceed.

CONCLUSION

In this case, each of the factors we normally apply to determine whether a defendant is entitled to Eleventh Amendment immunity weighs against extending such protection to Sheriff Peterson. Georgia law clearly defines Sheriff Peterson as a county officer and jails as county institutions; the state's corrections authorities exercise no control over Sheriff Peterson in his operation of the county jail; Clinch County appropriates Sheriff Peterson's operating budget and pays for the jail's construction and upkeep; and there is no indication that a judgment against Sheriff Peterson would operate against the state of Georgia.

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[18] The majority seeks to mitigate the force of the state's non-liability by speaking in broad terms of the potential for judgments against sheriffs to "interfere with a state program or function." Majority Opinion at 47. This argument begs the question. In drawing a connection between sheriffs and "a state program," the majority presumes the very point it has failed to establish in its application of our first three Eleventh Amendment factors.

By inventing a previously unknown function as the purported focus of its analysis, the majority trades the clarity to be found in the Georgia law of county jails for a blur of inference and speculation. The upshot is a substantial blow to established law assuring citizens' ability to hold local governments accountable for violations of the United States Constitution. *See Jinks,* 123 S.Ct. at 1673; *Monell,* 436 U.S. at 690-91. A correct reading of Georgia law shows that county sheriffs operate county jails for the counties in which they serve. In every sense, a suit under 42 U.S.C. § 1983 against a county sheriff alleging mistreatment in a county jail is a suit against a local government. The Eleventh Amendment, which protects states, is inapplicable, and the decision of the district court should therefore be affirmed.

For the foregoing reasons, I dissent.

285 F.3d 983

United States Court of Appeals,
Eleventh Circuit.

Willie Santonio MANDERS, Plaintiff-Appellee,

v.

Truman LEE, and Chris Crews, a.k.a. Bart Crews, individually and as employees of the City of Homerville, the City of Homerville, Georgia, Alan Brown, individually and as an employee of Clinch County, and Clinch County, Georgia, Defendants,

Winston Peterson, individually and as employee of Clinch County, Georgia, Defendant-Appellant.

No. 01-13606.

March 14, 2002.

Richard K. Strickland, Whelchel, Brown, Readdick & Bumgartner, Brunswick, GA, for Peterson.

Theodore H. Lackland, Lackland & Heyward, Atlanta, GA, for Manders.

Appeal from the United States District Court for the Middle District of Georgia.

Before BLACK and HULL, Circuit Judges, and RYSKAMP,* District Judge.

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* Honorable Kenneth L. Ryskamp, U.S. District Judge for the Southern District of Florida, sitting by designation.

HULL, Circuit Judge:

Plaintiff Willie Santonio Manders sued the defendant Winston Peterson, individually and as Sheriff of Clinch County, Georgia, for injuries caused by excessive force against Manders while detained in the county jail. This interlocutory appeal presents the question of whether a Georgia sheriff in his official capacity is an agent for the state, not the county, when performing his law enforcement duties as to use of force, and thus is entitled to Eleventh Amendment immunity from suit under 42 U.S.C. § 1983.

In the past, our circuit has treated § 1983 suits against Georgia sheriffs in their official capacities as suits against counties. Although those decisions did not analyze whether a sheriff under Georgia law actually represents the state or the county, we are constrained to follow them and must affirm the district court's denial of summary judgment to Sheriff Peterson in his official capacity.

However, as explained herein, we question the correctness of those decisions. We believe that Sheriff Peterson in his official capacity is an agent for the State of Georgia, not Clinch County, when performing his law enforcement duties as to use of force, and is protected by Eleventh Amendment immunity.

I. BACKGROUND

A. Facts

Clinch County, Georgia, is a small rural county with a population of approximately 6,000. As the elected Sheriff, the defendant Winston Peterson ("Sheriff Peterson") is responsible for the operation of the jail in Clinch County,

for establishing the policies and procedures at the jail, and for hiring, training, and supervising his deputies who work in the jail. Sheriff Peterson's deputy and chief jailer was the defendant Alan Brown.

On May 18, 1997, police officers from the City of Homerville arrested the plaintiff Willie Santonio Manders ("Manders") and transported him to the jail. As Manders was being escorted into the holding cell at the jail, one of the City police officers stated that Manders had "hit him" earlier.[1] According to Manders, deputy Brown and a City police officer then repeatedly struck him across the head, neck, and face and banged his head against a wall. Manders suffered from a bruised, swollen face, and the beating affected him emotionally, eventually leading to a stay in a mental hospital.

The morning after the beating, Manders wrote a statement for jail officials, wherein he stated, "They had to be rough with me to let me know that they mean business." In his deposition, Manders testified that Sheriff Peterson and some other officer forced him to write this statement. That same day Manders was released from jail. Afterwards, Manders's mother met with Sheriff Peterson to discuss the beating of her son. According to Manders's mother, Sheriff Peterson responded to her concerns about the beating as follows: "[T]hat happens sometimes when

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[1] Prior to his arrest, Manders had punched a City of Homerville police officer. The parties dispute what happened between the time Manders was brought into the jail and the time he was placed in the holding cell. We, however, recount the evidence in the light most favorable to Manders, the non-moving party on a motion for summary judgment.

they bite and scratch." Sheriff Peterson did not investigate the beating incident.

Manders also introduced into evidence the Policy and Procedural Manual (the "Manual") of the Clinch County Sheriff's Department. In his deposition, Sheriff Peterson testified that he published the Manual in either 1989 or 1990, drafting some of the policies himself and adopting some state policies. The Manual requires that "[e]ach case involving physical or defensive force be reported in writing to the Sheriff," as follows:

> (A) Notification of Supervisor
>
> 1. The Sheriff shall be immediately informed of each incident involving the use of force by officers of this Department. Such notification shall be on the same date of the incident.
>
> 2. Each case involving physical or defensive force shall be reported in writing to the Sheriff.
>
> 3. Each officer present or assisting in an arrest or incident requiring force shall be prepared to submit a report supplement describing the incident if requested.

Deputy Brown, however, never submitted a written report indicating he used force with Manders, and Sheriff Peterson never required deputy Brown to do so even after having met with Manders's mother.

In addition to the report requirement, the Manual discusses both non-deadly and deadly force by an officer in the performance of his duties. The Manual provides that non-deadly force may be used by an officer in these situations:

1. When necessary to preserve the peace, prevent commission of offenses, or prevent suicide or self-inflicted injury.

2. When preventing or interrupting a crime or attempted crime against property.

3. When making lawful arrests and searches, overcoming resistance to such arrest and searches, and preventing escapes from custody.

4. When in self defense, or defense of another against unlawful violence to his person.

The Manual also discusses in detail when use of deadly force is justified. Sheriff Peterson does not have any other written or standard operating procedures for the use of force at the jail or for formal citizen complaints.

B. Amended Complaint

On March 24, 1999, Plaintiff Manders filed his complaint. He promptly amended it on April 20, 1999, naming numerous defendants. The only two remaining defendants, however, are Clinch County, Georgia, and Sheriff Peterson in his official capacity.[2] The amended complaint asserted that at the time of the acts complained of, the defendant Peterson was acting both individually and as an agent of

[2] Manders's amended complaint sued these other defendants: (1) Truman Lee, individually and as an employee of the City of Homerville; (2) Chris Crews a.k.a Bart Crews, individually and as an employee of the City of Homerville; (3) the City of Homerville, Georgia; (4) Alan Brown, individually and as an employee of Clinch County; and (5) Sheriff Peterson, individually. All of these defendants have been dismissed or granted summary judgment.

and representative of Clinch County and was operating under the color of state law.

In his amended complaint, Manders further claims that Clinch County and Sheriff Peterson were responsible for establishing policies regarding the use of force at the jail and for implementing those policies by training, monitoring, and disciplining deputies to ensure that the use-of-force policies were followed. According to Manders, deputy Brown beat him, and Clinch County and Sheriff Peterson permitted deputy Brown's use of excessive force. Manders also asserts that Clinch County and Sheriff Peterson failed to provide deputies proper training and oversight regarding use of force at the jail and failed to promulgate rules and regulations adequate to regulate deputies' conduct, and that this failure caused the beating suffered by Manders.

In addition, the amended complaint alleged that Sheriff Peterson had negligently hired and retained deputy Brown. More specifically, it alleged that Sheriff Peterson knew or should have known that deputy Brown had a history and reputation for violent treatment of prisoners both during and prior to his employment as a deputy sheriff at the jail. The amended complaint asserted that the beating of the plaintiff Manders would not have occurred but for Sheriff Peterson's negligent hiring and retention of deputy Brown.

Manders sought damages against Clinch County and Sheriff Peterson, including punitive damages from Sheriff Peterson. Manders further requested a mandatory injunction

whereby the County would be required to revise its policies, guidelines, and regulations on the use of force.[3]

C. Summary Judgment Motions

The defendants Clinch County and Sheriff Peterson filed a joint motion for summary judgment on all claims. The district court granted summary judgment (a) to Sheriff Peterson in his individual capacity as to all claims, (b) to Clinch County and Sheriff Peterson in his official capacity as to Manders's § 1983 claim for the negligent hiring and retention of deputy Brown, and (c) to Clinch County and Sheriff Peterson as to all claims for injunctive

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[3] A reader of the amended complaint may wonder (a) whether it purports to sue Sheriff Peterson only individually or also in his official capacity, and (b) whether all the § 1983 claims against Clinch County are also made against Sheriff Peterson in both capacities. In particular, the amended complaint appears to assert a negligent hiring claim against only Sheriff Peterson and to allege the other § 1983 violations against only the defendant Clinch County.

Nonetheless, what is clear and undisputed is that the parties and the district court litigated this lawsuit against Sheriff Peterson (a) in both his individual and official capacities and (b) as if all of Manders's § 1983 claims against Clinch County were also made against Sheriff Peterson in both capacities. *See Marsh v. Butler County,* 268 F.3d 1014, 1024 n. 4 (11th Cir.2001) (*en banc*) (concluding that this Court would "decide th [e] case as one in which the complaint purports to sue the Sheriff in both her official and individual capacities," even though the text of the complaint did not state an individual capacity claim, because "the parties and the district judge clearly litigated the case in that way"). Additionally, never did Sheriff Peterson challenge Manders's amended complaint (a) on the specific ground that it did not even purport to assert a claim against him except in his individual capacity, or (b) on the specific ground that the only claim in the complaint against Sheriff Peterson was for the negligent hiring and retention of deputy Brown.

relief, stating Manders "lacked the requisite personal stake in the outcome," apparently because Manders was no longer in the jail. Manders did not appeal or cross-appeal any of the rulings granting summary judgment to the defendants.

The district court, however, denied summary judgment with respect to the use-of-force policy claims under § 1983 against Clinch County and Sheriff Peterson in his official capacity. Although Clinch County did not appeal, Sheriff Peterson did. Before appealing, Sheriff Peterson in his official capacity filed a motion for reconsideration, emphasizing that he was a state, not a county, official when performing his law enforcement duties and was entitled to Eleventh Amendment immunity. After the district court denied his motion, Sheriff Peterson timely filed this interlocutory appeal.[4]

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[4] The fact that Manders sued the County and the Sheriff in his official capacity as separate defendants and that this appeal is by the Sheriff in his official capacity, and not the County, are distinctions that make a difference in our jurisdiction to hear this interlocutory appeal. When a county appeals asserting that a sheriff is not a county policymaker under § 1983, that presents a defense to liability issue as to the county. *See Swint v. Chambers County Comm'n,* 514 U.S. 35, 42-43, 115 S.Ct. 1203, 131 L.Ed.2d 60 (1995). In contrast, when a sheriff in his official capacity appeals asserting that he represents the state and is entitled to Eleventh Amendment immunity, this presents an immunity from suit issue. *See Puerto Rico Aqueduct and Sewer Auth. v. Metcalf & Eddy, Inc.,* 506 U.S. 139, 147, 113 S.Ct. 684, 121 L.Ed.2d 605 (1993) ("States and state entities that claim to be 'arms of the State' may take advantage of the collateral order doctrine to appeal a district court order denying a claim of Eleventh Amendment immunity.").

II. PRIOR PANEL PRECEDENT CONTROLS

A. Question Presented

This appeal is by only Sheriff Peterson in his official capacity and involves only Manders's § 1983 claims regarding Sheriff Peterson's law enforcement duties and policies as to use of force and his training, supervising, and disciplining of his deputies regarding use of force.

It is well established that a suit against a defendant governmental officer in his official capacity is the same as a suit against the entity of which the officer is an agent. *See McMillian v. Monroe County,* 520 U.S. 781, 785 n. 2, 117 S.Ct. 1734, 138 L.Ed.2d 1 (1997); *Kentucky v. Graham,* 473 U.S. 159, 165, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985). It is also settled that Eleventh Amendment immunity extends not only to states of the Union but also to "state agents and state instrumentalities," *Regents of the University of California v. Doe,* 519 U.S. 425, 429, 117 S.Ct. 900, 137 L.Ed.2d 55 (1997), or "stated otherwise" to "arm [s] of the state" as well as state officials. *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle,* 429 U.S. 274, 280, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977).[5] But the Eleventh Amendment does

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[5] "Although the express language of the [Eleventh] [A]mendment does not bar suits against a state by its own citizens, the Supreme Court has held that an unconsenting state is immune from lawsuits brought in federal court by the state's own citizens." *Carr v. City of Florence,* 916 F.2d 1521, 1524 (11th Cir.1990) (citing *Hans v. Louisiana,* 134 U.S. 1, 10 S.Ct. 504, 33 L.Ed. 842 (1890)). "[I]n the absence of consent[,] a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment." *Pennhurst State Sch. & Hosp. v. Halderman,* 465 U.S. 89, 100, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984). Georgia has not waived its Eleventh Amendment immunity. The Georgia Constitution expressly provides that "[n]o waiver of sovereign immunity . . . shall be construed

(Continued on following page)

not extend to counties and similar municipal corporations. *Id.* The parties do not dispute that Eleventh Amendment immunity bars Manders's § 1983 claims if Sheriff Peterson is an agent of the state, and not the county. Instead, their dispute is over what entity Sheriff Peterson in his official capacity represents when performing his law enforcement duties at issue here. Is the sheriff in his official capacity an agent of the State of Georgia or Clinch County for purposes of the Eleventh Amendment?[6]

B. Prior Panel Precedent

In the past, this Court has summarily treated official capacity suits against sheriffs in Georgia as suits against counties. *See Wayne v. Jarvis,* 197 F.3d 1098, 1105 (11th

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as a waiver of any immunity provided to the state or its departments, agencies, officers or employees by the United States Constitution." Ga. Const. Art. 1, § 2, ¶ 9(f).

[6] A third "entity" possibility is that the Sheriff is an agent of the Sheriff's Department and that a sheriff's department is an independent office that is not subject to either county or state control. The parties have not made this contention, nor have they cited any authority indicating the Sheriff's Department is a separate or independent legal entity capable of being sued under Georgia law. The "capacity to sue or be sued shall be determined by the law of the state in which the district court is held." Fed.R.Civ.P. 17(b).

What little authority we could locate may explain why the parties do not make this contention. This Court has observed that "[s]heriff's departments and police departments are not usually considered legal entities." *Dean v. Barber,* 951 F.2d 1210, 1214 (11th Cir.1992) (dismissing claim against sheriff's department because department was not subject to suit under Alabama law); *see also Shelby v. City of Atlanta,* 578 F.Supp. 1368, 1370 (N.D.Ga.1984) (concluding City of Atlanta police department is not a proper party defendant because department is "merely the vehicle through which the City government fulfills its policing functions").

Cir.1999) (stating that "[a]lthough [plaintiff] Wayne did not sue DeKalb County itself, his claim against Sheriff Jarvis in his official capacity is a claim against DeKalb County"); *Alexander v. Fulton County,* 207 F.3d 1303, 1322 n. 14 (11th Cir.2000) (stating "[p]laintiffs' suit against Sheriff Barrett in her official capacity is the functional equivalent of suing the County").[7] In these cases, we did not discuss Eleventh Amendment immunity or whether under Georgia law the sheriff is an agent for the state or the county, as it does not appear the parties raised these issues. Further, in *Vineyard v. County of Murray,* 990 F.2d 1207 (11th Cir.1993), the parties did not challenge on

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[7] In *Wayne,* the plaintiff inmate brought, *inter alia,* a § 1983 claim against the defendants Sheriff Jarvis in his official capacity and the Sheriff's Department based on their failures to provide adequate medical care and to protect him from other inmates. 197 F.3d at 1100-02. We "proceed[ed] to address the merits of the district court's grant of summary judgment in favor of the County, which was properly sued in this case through the official capacity claim against the Sheriff." *Id.* at 1105. As to the Sheriff's Department, we observed that "[t]he district court noted that 'under Georgia law, the DeKalb County Sheriff's Department is not a legal entity that can be sued apart from the County.'" *Id.* But we concluded that "[r]egardless of whether that is correct, because Wayne's official capacity claim against Jarvis is a claim against the County, his claim against the Sheriff's Department of the County is redundant." *Id.*

In *Alexander,* the plaintiff employees brought Title VII and § 1983 claims against the defendants Fulton County and Sheriff Barrett, individually and in her official capacity. 207 F.3d at 1313-14. After discussing whether Sheriff Barrett in her individual capacity was entitled to qualified immunity, this Court did not address whether the County or the Sheriff in her official capacity were liable under § 1983 "[b]ecause Title VII provide[d] an alternative basis for liability." *See id.* at 1321-22. In a footnote, we did note that "Plaintiffs' suit against Sheriff Barrett in her official capacity is the functional equivalent of suing the County." *Id.* at 1322 n. 14.

appeal the district court's jury instruction that the sheriff had authority to make policy for Murray County, Georgia, in the area of law enforcement. *See id.* at 1210. Thus we did not examine these issues in *Vineyard* either.[8]

In contrast, here the legal question of whether a sheriff under Georgia law represents the state or the county is vigorously debated because (1) Manders sued Clinch County and Sheriff Peterson in his official capacity as separate defendants,[9] and (2) the Sheriff has appealed the denial of summary judgment, claiming that he is a state official, that a claim against him in his official capacity is a claim against the state, not the county, and that therefore he is entitled to Eleventh Amendment immunity. Although this question was not scrutinized in our earlier decisions, we are bound by the holding of the first panel of this Court to address an issue of law, unless and until that holding is overruled *en banc* or by the Supreme Court. *See, e.g., Smith v. GTE Corp.,* 236 F.3d 1292, 1300 n. 8, 1302-03 (11th Cir.2001); *Turner v. Beneficial Corp.,* 236 F.3d 643, 648-50 (11th Cir.2000), *vacated by* 242 F.3d 1023 (11th Cir.2001) (*en banc); United States v.*

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[8] In *Vineyard,* the plaintiff, alleging that the sheriff's deputies beat him, sued Murray County and the sheriff in his official capacity, among others, under § 1983 because of inadequate policies of supervision, training, and discipline of deputies, which caused the violation of the plaintiff's rights. 990 F.2d at 1209. After a jury verdict against the sheriff in his official capacity and Murray County, they asserted errors on appeal, but they did not challenge this jury instruction as error. *See id.* at 1210.

[9] It could be argued that the fact that Sheriff Peterson was sued separately indicates he is a state agent because if he represents the county, then the official capacity claim against him is redundant and not necessary.

Hogan, 986 F.2d 1364, 1369 (11th Cir.1993). Therefore, under our prior panel precedent rule, we treat Manders's § 1983 claims against Sheriff Peterson in his official capacity as claims against Clinch County and deny him Eleventh Amendment immunity.

Nonetheless, we question the correctness of that precedent. We first outline the relevant factors in determining Eleventh Amendment immunity. We then apply them to sheriffs under Georgia law. Doing so causes us to conclude that Georgia sheriffs are agents of the state, not counties, when performing their law enforcement duties as to use of force.[10]

III. WHY PRIOR PRECEDENT NEEDS REEXAMINATION

A. Eleventh Amendment Factors

While this Court has never scrutinized whether Georgia sheriffs are agents of the state or county, this Court has decided that issue as to Alabama and Florida sheriffs. Our decisions about other states' sheriffs are not directly applicable because the answer to whether an official is an agent of a particular state is dependent in large part upon that state's law. Nonetheless, we start

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[10] Our review of legal issues is *de novo. See In re Burke,* 146 F.3d 1313, 1316 (11th Cir.1998). Because the question here requires interpretation of the Eleventh Amendment, it is a federal question that we decide *de novo,* even though state law must be considered in defining the character of the sheriff's office. *See Regents of the Univ. of Cal. v. Doe,* 519 U.S. 425, 429 n. 5, 117 S.Ct. 900, 137 L.Ed.2d 55 (1997); *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle,* 429 U.S. 274, 280, 97 S.Ct. 568, 50 L.Ed.2d 471 (1977).

with these decisions because they indicate the relevant factors when examining whether a sheriff represents the state or the county for purposes of the Eleventh Amendment.

1. *Alabama Sheriffs*

We considered three factors in concluding that Alabama sheriffs, deputy sheriffs, and jailers are state officials protected by Eleventh Amendment immunity. *See Lancaster v. Monroe County,* 116 F.3d 1419, 1429-30 (11th Cir.1997) (sheriffs and jailers); *Carr v. City of Florence,* 916 F.2d 1521, 1525-27 (11th Cir.1990) (deputy sheriffs). In *Lancaster,* we considered: (1) the relationship between sheriffs and jailers under Alabama law; (2) the control that the county exercises over sheriffs and jailers; and (3) whether an award of damages would be paid with state funds. 116 F.3d at 1429.[11] *Carr* considered the same factors but as to sheriffs and their deputies. Although *Carr* and *Lancaster* both listed the third damages factor, this Court in both cases ultimately noted that the plaintiff had not presented evidence that a damage award would be paid

[11] While focusing on the sheriffs' jailers, this Court in *Lancaster* also stated that "[t]he district court ruled that Sheriff Tate is a state official and, therefore, Tate was entitled to summary judgment on Ms. Lancaster's § 1983 official capacity claims. That ruling is a correct application of *Parker v. Williams,* 862 F.2d 1471 (11th Cir.1989)." *Lancaster,* 116 F.3d at 1429. This Court has continued to follow *Parker's* ruling that Alabama sheriffs in their official capacity are entitled to Eleventh Amendment immunity, but this Court *en banc* has overruled *Parker's* separate holding that Alabama sheriffs are county policymakers in their daily management of county jails for purposes of § 1983. *See Turquitt v. Jefferson County,* 137 F.3d 1285, 1291-92 (11th Cir.1998) (*en banc*).

paid out of county funds. Therefore, in both cases we concluded that "[i]n the absence of clear evidence that the counties would pay a damages award," we cannot find this policy consideration underlying Eleventh Amendment immunity defeats the claims to immunity. *Lancaster,* 116 F.3d at 1430; *Carr,* 916 F.2d at 1526-27. In both cases we so concluded, even though the salaries of the Alabama sheriffs, deputies, and jailers were paid by the counties. *Lancaster,* 116 F.3d at 1430; *Carr,* 916 F.2d at 1526.

2. *Florida Sheriffs*

By comparison, our decisions considered four factors in concluding Florida sheriffs were not agents of the state and were not protected by Eleventh Amendment immunity. *See, e.g., Hufford v. Rodgers,* 912 F.2d 1338, 1341-42 (11th Cir.1990).[12] We recently examined the same four factors in determining that the Florida State Athletic Commission is an arm of the state protected by such immunity. *See Miccosukee Tribe of Indians of Fla. v. Fla. State Athletic Comm'n,* 226 F.3d 1226, 1231-34 (11th Cir.2000). In both decisions, we examined: (1) how state law defines the entity; (2) what degree of control the state maintains over the entity; (3) where the entity derives its funds; and (4) who is responsible for judgments against the entity. *Miccosukee Tribe,* 226 F.3d at 1231-34; *Hufford,* 912 F.2d at 1341-42. In *Hufford,* we pointed out that "the Florida Constitution indicates that a sheriff is a county

[12] Subsequent cases involving Florida sheriffs followed *Hufford v. Rodgers* in concluding that Florida sheriffs are county officials. *See, e.g., Gordan v. Cochran,* 116 F.3d 1438, 1439 n. 1 (11th Cir.1997); *Rivas v. Freeman,* 940 F.2d 1491, 1495 (11th Cir.1991).

officer," and we discerned in the Florida statutes "no intent for state officials to control or supervise the sheriff." 912 F.2d at 1341-42. We also observed that the sheriff was insured through monies appropriated by the county "as part of a self-insurance fund established by sheriffs of the state of Florida," and we could locate no Florida law providing the sheriff with state funds to pay a judgment. *Id.* at 1342.

Subsequent to *Hufford,* the focus of the Eleventh Amendment immunity analysis in *Regents of the University of California v. Doe,* 519 U.S. 425, 117 S.Ct. 900, 137 L.Ed.2d 55 (1997), was on "potential legal liability" and "the risk of adverse judgments," as opposed to requiring that state funds actually pay the judgment. *Id.* at 430-31, 117 S.Ct. 900. In *Regents,* the Supreme Court concluded that the fact that a state university would be indemnified by the federal government for any adverse judgment and costs of litigation and that, therefore, the litigation would have *no impact* on the state treasury did not affect that university's immunity under the Eleventh Amendment. *Id.* The Supreme Court emphasized that "[t]he Eleventh Amendment protects the State from the risk of adverse judgments even though the State may be indemnified by a third party," and "it is the entity's potential legal liability, rather than its ability or inability to require a third party to reimburse it, or to discharge the liability in the first instance, that is relevant." *Id.* at 431, 117 S.Ct. 900; *see Shands Teaching Hosp. and Clinics, Inc. v. Beech Street Corp.,* 208 F.3d 1308, 1311, 1313 (11th Cir.2000) (quoting and applying *Regents* and concluding that two private corporations acted as agents of the state in administering the state's health insurance program and were protected by Eleventh Amendment immunity).

3. *Control Factor*

We also mention two recent decisions concluding that Alabama sheriffs are state, not county, policymakers for purposes of § 1983 liability because several factors relied on in our Eleventh Amendment precedent were also present and pivotal in those decisions. *See McMillian v. Monroe County,* 520 U.S. 781, 117 S.Ct. 1734, 138 L.Ed.2d 1 (1997); *Turquitt v. Jefferson County,* 137 F.3d 1285 (11th Cir.1998) (*en banc*). While the § 1983 policymaker issue in these decisions was a liability question distinct from the threshold immunity issue here, certain factors are common to the analysis of both legal questions. In fact, *McMillian* and *Turquitt* similarly examined how the state law defines the nature of the entity, the relationship between sheriffs, their deputies, and jailers under state law, and the degree of control the state or county maintains over sheriffs, their deputies, and jailers.[13] Thus, *McMillian* and *Turquitt* are instructive as to how to evaluate those particular factors.

In that regard, *McMillian* and *Turquitt* teach that we must consider the label of state or county officer but also

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[13] Based on *Turquitt,* a recent *en banc* decision summarily granted Eleventh Amendment immunity to Alabama sheriffs when sued in their official capacities. *Marsh v. Butler County,* 268 F.3d 1014, 1028 (11th Cir.2001) (*en banc*) (stating "Alabama sheriffs are considered arms of the state and protected by sovereign immunity in suits against them in their official capacity" and concluding "[t]he complaint against the Sheriff in her official capacity was thus properly dismissed"); *see Taylor v. Adams,* 221 F.3d 1254, 1256 (11th Cir.2000) (stating "[i]n their official capacity, . . . Alabama sheriffs operating jails are state officers protected by Eleventh Amendment immunity" and affirming summary judgment for the Sheriff of Mobile County on Eleventh Amendment immunity grounds).

must look beyond that label to what government entity controls sheriffs, their deputies, and jailers. After noting that the § 1983 policymaker question "is dependent on an analysis of state law," the Supreme Court in *McMillian* observed that "[t]his is not to say that state law can answer the question for us by, for example, *simply labeling* as a state official an official who clearly makes county policy." 520 U.S. at 786, 117 S.Ct. 1734 (emphasis supplied). Instead, the Supreme Court's "understanding of the actual function of a governmental official, in a particular area, will necessarily be dependent on the definition of the official's functions under relevant state law." *Id.* Looking beyond labels, the Supreme Court examined Alabama's Constitution, Code, and the interpretation given them by the Alabama courts in order to determine the function of a sheriff under Alabama law. *See id.* at 787-93, 117 S.Ct. 1734.[14]

Although the Alabama Constitution provided that the state executive department includes "a sheriff for each county" and, in effect, labeled the sheriff as a state executive officer, *see id.* at 787, 117 S.Ct. 1734, the Supreme Court in *McMillian* did not end its analysis there. Instead, it examined Alabama Code provisions and noted that the

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[14] Similarly, in *McMillian v. Johnson*, 88 F.3d 1573 (11th Cir.1996), *aff'd sub nom. McMillian v. Monroe County*, 520 U.S. 781, 117 S.Ct. 1734, 138 L.Ed.2d 1 (1997), this Court determined that the Alabama Constitution's designation of a sheriff as a state official was relevant but not dispositive in determining whether a sheriff exercises state or county power. *Id.* at 1580-81. We viewed the designation of the sheriff as a state official as evidence of the county's lack of law enforcement power. *See id.* at 1581 n. 4. ("We base our decision not on a sheriff's 'label,' but on the county's lack of law enforcement power, of which a sheriff's designation as a state official is evidence.").

county had no control over the sheriff's law enforcement duties, whereas the Governor and the Attorney General had such control under an Alabama statute. *Id.* at 790-91, 117 S.Ct. 1734. Even though Alabama Code provisions suggested that the county had some influence over the sheriff (such as the county's payment of his salary and equipment), and even though the sheriff was elected locally by county voters, the Supreme Court indicated that such factors did not amount to significant control over the sheriff's operations. *See id.* at 791-92, 117 S.Ct. 1734.

Subsequently, in *Turquitt v. Jefferson County,* 137 F.3d 1285 (11th Cir.1998), this Court *en banc* concluded that "Alabama sheriff[s] act exclusively for the state rather than the county in operating a county jail." *Id.* at 1288. Although noting that Alabama's Constitution "sends a clear message that a sheriff is a state officer," *id.* at 1289, we too focused on control in deciding the § 1983 policymaker issue. The state empowered Alabama sheriffs to exercise authority over the jail independent from the county. *See id.* at 1289-91. For example, "the sheriff appoints, directs, and controls the deputies and jailers who work at the jail." *Id.* at 1289. In addition, a state agency, the Alabama Department of Corrections, oversees the county jails, has the authority to regulate them, and must inspect the jails periodically to "aid in securing the just, humane, and economic management of them." *Id.* (internal quotation marks omitted). The Alabama Code did not delegate the county any authority regarding supervision of inmates in a county jail. *Id.* at 1291.

Although Alabama counties maintain the jail structure, appropriate funds for certain necessities to inmates (such as bedding, clothing, electricity, and sanitation), pay the salaries of the sheriff and jail personnel, and remain

informed about jail conditions, we determined that these factors did not translate into control over the sheriff in performing his duties related to the daily operation of the jail and supervision of the inmates. *See id.* at 1289-91. We reasoned that the governing Alabama statutes "impose complementary but distinct duties upon counties and sheriffs with respect to the county jails" and that the county has the duty to make available adequate funds while the sheriff has the responsibility to spend those funds. *Id.* at 1290.[15] We concluded that "Alabama sheriffs are not county policymakers in their daily management of county jails." *Id.* at 1292.[16]

4. *Particular Area or Function*

Before leaving *McMillian* and *Turquitt,* we point out that both decisions focused their attention not only on state law but also on the particular area or function for which the government official was alleged to be the final policymaker. *McMillian,* 520 U.S. at 785, 117 S.Ct. 1734;

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[15] The county's lack of control over the sheriff in the operation of the jail was also significant in *Turquitt* because "local governments can never be liable under § 1983 for the acts of those whom the local government has no authority to control." 137 F.3d at 1292. Indeed, in *Turquitt* we emphasized the importance of the control factor by characterizing the inquiry in *McMillian* as asking "which government body, under state law, had direct control over how the sheriff fulfilled his law enforcement duty." *Id.*

[16] Concluding that "Alabama counties have no duties with respect to the daily operation of the county jails and no authority to dictate how the jails are run," we stressed that "[t]he sheriffs, on the other hand, have full responsibility for the daily management of the jails, including inmate supervision, and they are not subject to county oversight in their performance of this responsibility." *Turquitt,* 137 F.3d at 1291.

Turquitt, 137 F.3d at 1287. In other words, for § 1983 liability, a determination must be made as to "who the policymaker is and in which particular area that policymaker acted." *Turquitt,* 137 F.3d at 1287-88.[17]

Although Eleventh Amendment immunity has sometimes been viewed as an all-or-nothing proposition in the past, it is developing that the particular area or function in issue now plays a role in Eleventh Amendment analysis. *See, e.g., Shands Teaching Hosp. and Clinics, Inc. v. Beech Street Corp.,* 208 F.3d 1308, 1311 (11th Cir.2000). For example, in granting immunity in *Shands,* we indicated that "[t]he pertinent inquiry is not into the nature of a corporation's status in the abstract, but its function or role in a particular context." *Id. Shands* involved two private corporations which had contracted with the state to administer its health insurance program and to provide a preferred provider organization ("PPO") network of medical services. *Id.* at 1310. The health program was funded through annual legislative appropriations. As to these particular functions, this Court concluded that the private corporations were contractually acting as agents or representatives of the state. Thus, we stated that "although

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[17] In *McMillian,* the Supreme Court also instructed that the policymaker question is not whether the sheriff acts for the state or county "in some categorical, 'all or nothing' manner" but whether the sheriff is a final policymaker for the state or county "in a particular area, or on a particular issue." 520 U.S. at 785, 117 S.Ct. 1734. In addition, "while it might be easier to decide cases arising under § 1983 and *Monell [v. Dep't of Soc. Servs.,* 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978)] if we insisted on a uniform, national characterization for all sheriffs, such a blunderbuss approach would ignore a crucial axiom of our government: the States have wide authority to set up their state and local governments as they wish." *Id.* at 795, 117 S.Ct. 1734.

these are private corporations that are neither controlled nor funded by the state, they are protected by governmental immunity when they are clearly acting as agents of the state." *Id.* at 1311.

In *Shands,* we also noted that other circuits had not adopted an approach of total or no immunity but looked to the relief sought and whether the judgment against the private corporation "would implicate the state treasury or interfere with the administration of the state group insurance program." *Id.* We concluded, *inter alia,* that the judgment against the private corporations "would implicate state funds" and that the fact the private corporations had indemnified the state was immaterial. *Id.* at 1313.

In light of the various factors in our Eleventh Amendment precedent, we now examine how Georgia law defines the sheriff's office, the relationship between sheriffs and their deputies, the degree of control the state versus the county maintains over the sheriff's office, where the sheriff's office derives its funds, and the potential legal liability of the state or county for any adverse judgment.

B. Georgia Constitution

Georgia's Constitution points different ways. It first clearly designates the sheriff as a "county officer." Ga. Const. Art. IX, § 1, ¶ 3(a). But in the same paragraph, it then grants the state legislature, not the county board, the authority to establish and control the qualifications, minimum salary, powers, and duties of the sheriff's office. Specifically, the Georgia Constitution provides that sheriffs "shall be elected by the qualified voters of their respective counties for terms of four years and shall have such

qualifications, powers, and duties as provided by general law." *Id.* That paragraph also provides that the "[c]ounty officers . . . may be on a fee basis, salary basis, or fee basis supplemented by salary," but that "[m]inimum compensation for said county officers may be established by the General Assembly by general law" and supplemented by local law or by action of the county governing authority. Ga. Const. Art. IX, § 1, ¶ 3(b).

Interpreting this Constitution, the Georgia Supreme Court has instructed that county sheriffs are subject to the control of the Georgia legislature and are *not* county employees. *Bd. of Comm'rs of Randolph County v. Wilson,* 260 Ga. 482, 482, 396 S.E.2d 903, 903 (1990) ("The sheriff . . . is an elected, constitutional officer; he is subject to the charge of the General Assembly and is not an employee of the county commission."); *Chaffin v. Calhoun,* 262 Ga. 202, 203, 415 S.E.2d 906, 907 (1992); *Warren v. Walton,* 231 Ga. 495, 499, 202 S.E.2d 405, 409 (1973).

The Georgia Constitution also prevents county governing authorities from taking any action affecting the sheriff's elective county office. Specifically, the Georgia Constitution provides that the legislative "power granted to counties . . . shall not be construed to extend to . . . [a]ction affecting any elective county office, the salaries thereof, or the personnel thereof, except the personnel subject to the jurisdiction of the county governing authority." Ga. Const. Art. IX, § 2, ¶ 1(c)(1). Interpreting this provision, the Georgia Supreme Court has concluded that this constitutional restriction on the legislative power granted to counties (i.e., Home rule) prevents counties from taking action affecting the sheriff's office. *See Stephenson v. Bd. of Comm'rs of Cobb County,* 261 Ga. 399,

401-02, 405 S.E.2d 488, 490 (1991); *Warren,* 231 Ga. at 499, 202 S.E.2d at 408-09.[18]

The Georgia Constitution also provides that "[t]he Governor shall take care that the laws are faithfully executed and shall be the conservator of the peace throughout the state." Ga. Const. Art. V, § 2, ¶ 2. In addition, the Constitution grants to the state legislature the authority to control sheriffs as law enforcement officers. The Georgia legislature has exercised that authority and enacted state laws that directly govern sheriffs, their qualifications, minimum salary, law enforcement powers and duties, training, investigation, and suspension. We review these particular state laws, which we believe make sheriffs answerable to the state as opposed to county boards.

C. Qualifications, Salary, and Training

In enacting Title 15, Chapter 16, entitled "Sheriffs," the Georgia legislature has declared sheriffs to be "the basic law enforcement officer[s] of the several counties of this state," O.C.G.A. § 15-16-1(a), and has mandated a detailed set of qualifications a person must satisfy in order to be a candidate for the sheriff's office in any county. *See* O.C.G.A. § 15-16-1(b)-(c). For example, the Georgia legislature requires that a sheriff be at least twenty-five years old, not have a felony record, be a resident of the county for at least two years prior to offering candidacy, and be a

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[18] Although *Warren* involved a prior version of the Georgia Constitution, the same relevant language is in the present version of the Georgia Constitution. *See Warren,* 231 Ga. at 499, 202 S.E.2d at 408-09.

registered or certified peace officer or complete the requirements of being a certified peace officer within six months after taking office. *Id.* The state has also set a certain minimum salary for sheriffs to be paid from county funds based on the population of the county. O.C.G.A. § 15-16-20(a) (charting minimum annual salary based on population).

In addition, the state has fixed the training requirements for sheriffs-elect and existing sheriffs in all counties. O.C.G.A. § 15-16-3. If a sheriff fails to comply with the annual training requirements, the Governor is authorized to suspend the sheriff without pay for ninety days. O.C.G.A. § 15-16-3(e)(4). Newly elected sheriffs must complete specialized training provided by the Georgia Sheriffs' Association with the assistance of the Georgia Public Safety Training Center. O.C.G.A. § 15-16-3(b). Thereafter, sheriffs must complete a minimum of twenty hours of training annually as selected by the Georgia Sheriffs' Association. O.C.G.A. § 15-16-3(e)(1). The Georgia Sheriffs' Association uses state or federal funds to cover all training costs. O.C.G.A. § 15-16-3(d). The state has further mandated that the failure of sheriffs to complete their training requirements results in the loss of their power to arrest. O.C.G.A. § 15-16-3(b), (e)(4).

D. Powers and Duties

The state, not counties, controls the powers and duties of sheriffs. For example, in O.C.G.A. § 15-16-10, the Georgia legislature has prescribed that it is the duty of sheriffs "[t]o execute and return the processes and orders of the courts and of officers of competent authority . . . with due diligence." O.C.G.A. § 15-16-10(a)(1). The state

mandates that it is the duty of sheriffs in their respective counties to attend all sessions of certain courts, to publish sales, citations, and other proceedings as required by law, to keep an execution docket, and to keep other specified records. O.C.G.A. § 15-16-10(a)(2)-(6). This same statute also empowers sheriffs "[t]o perform such other duties as are or may be imposed by law or which necessarily appertain to his or her office" and provides that "[i]f any sheriff or deputy fails to comply with any provision of [O.C.G.A. § 15-16-10(a)], he shall be fined for contempt." O.C.G.A. § 15-16-10(a)(8), (b).

In O.C.G.A. § 42-4-4, the state also requires that the sheriffs operate the jails in their counties and be reimbursed for doing so from the county treasury. Specifically, the Georgia legislature has mandated that "[i]t shall be the duty of the sheriff . . . [t]o take from the outgoing sheriff custody of the jail and the bodies of such persons as are confined therein" and to furnish such persons in the jail "medical aid, heat, and blankets, to be reimbursed if necessary from the county treasury." O.C.G.A. § 42-4-4(a)(1)-(2). In addition to requiring sheriffs to furnish "medical aid, heat, and blankets," the state imposes other controls on the sheriffs' operation of their jails. The state has fixed the training requirements for the sheriffs' jail officers by mandating that they complete a training course approved by the Georgia Peace Officer Standards and Training Council and by making jail officers subject to certain powers and authorities of that Council. O.C.G.A. § 35-8-24(a)(1)-(c). The state also prescribes that a jailer may not be "guilty of willful inhumanity or oppression to any inmate under his care and custody." O.C.G.A. § 42-4-5; *see also Kendrick v. Adamson,* 51 Ga.App. 402, 402, 180 S.E. 647, 648 (1935). A state agency, the Department of

Human Resources, inspects the jail periodically "to ensure against the presence of unsanitary conditions." O.C.G.A. § 42-4-32(c).

The Georgia legislature has also empowered county sheriffs to act beyond the boundaries of their counties of election in certain circumstances. For example, the state requires sheriffs to take persons arrested to a jail of another county if the jail of the sheriff's county is in an "unsafe condition." O.C.G.A. § 42-4-4(a)(3). With respect to § 42-4-4(a)(3) transfers, the Georgia Supreme Court instructs that "[t]he legislature has vested the sheriff alone with the administrative authority to order such transfers," and that a superior court may not order such a transfer *sua sponte*, although the sheriff would be required to carry out an order of the superior court if the issue of the unsafe conditions of the jail was properly before the trial court. *In re Irvin,* 254 Ga. 251, 253-54, 328 S.E.2d 215, 218 (1985). The state also allows sheriffs to exercise their discretion to "transfer[ ] a prisoner to another jail in another county if the sheriff concludes that such transfer is in the best interest of the prisoner or that such transfer is necessary for the orderly administration of the jail." O.C.G.A. § 42-4-4(b).

In addition, the Georgia legislature has empowered sheriffs to make arrests for traffic violations outside their elected territories. *See* O.C.G.A. § 40-13-30; *City of Winterville v. Strickland,* 127 Ga.App. 716, 718-19, 194 S.E.2d 623, 625 (1972). A state agency, the Georgia Crime Information Center ("GCIC"), also has the authority to oversee and regulate sheriffs with regard to the maintenance of warrants. O.C.G.A. §§ 35-3-30 to -40. Georgia law delegates no such authority to counties.

E. Investigation and Suspension

The state, not counties, has the right to investigate and suspend sheriffs. If a sheriff is suspected of any misconduct, including misconduct in the performance of his duties, the Governor may initiate an investigation funded by the executive branch of the state government, and the Governor has the authority to suspend the sheriff. O.C.G.A. § 15-16-26. Specifically, the Governor may determine that an investigation of a sheriff "should be made as a result of criminal charges, alleged misconduct in office, or alleged incapacity of the sheriff to perform the functions of his office." O.C.G.A. § 15-16-26(a). The investigation is conducted by a committee composed of two sheriffs and the state Attorney General, and the investigation is funded by the executive branch of the state government. *Id.* Within thirty days, the committee provides the Governor a report of its investigation. O.C.G.A. § 15-16-26(b). If the committee recommends suspension, the Governor may suspend the sheriff for up to sixty days, and may extend that suspension by thirty additional days. O.C.G.A. § 15-16-26(c). The Governor is also "authorized to request the district attorney of the county of the sheriff's residence to bring a removal petition against the sheriff." *Id.*[19]

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[19] The Governor may also require further investigation "by the committee, by the Georgia Bureau of Investigation, by other law enforcement agencies of this state, or by any special committee appointed by the Governor for such purpose." O.C.G.A. § 15-16-26(c). The judicial proceedings for removal of a sheriff are conducted in an manner identical to the removal proceedings of a clerk of the superior court under O.C.G.A. § 15-6-82. *See* O.C.G.A. §§ 15-16-10(b) & 42-4-4(c). A sheriff may be "removed from office by the judge of the court for any

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F. Deputy Sheriffs and Deputy Jailers

Under Georgia law, sheriffs exercise authority over their deputies independent from the county. Sheriffs alone hire and fire their deputies. O.C.G.A. § 15-16-23 provides that "[s]heriffs are authorized in their discretion to appoint one or more deputies." Georgia courts have concluded that sheriffs alone are entitled to appoint and discharge their deputies and that deputies (including those serving as jailers) are employees of the sheriff and *not the county. Warren v. Walton,* 231 Ga. 495, 499, 202 S.E.2d 405, 409 (1973) (recognizing that "deputy sheriffs and deputy jailors are employees of the sheriff, whom the sheriffs alone are entitled to appoint or discharge") (internal quotation marks omitted); *Drost v. Robinson,* 194 Ga. 703, 710, 22 S.E.2d 475, 480 (1942); *Brown v. Jackson,* 221 Ga.App. 200, 201, 470 S.E.2d 786, 787 (1996) (noting deputy sheriffs "were employees of the sheriff and not Peach County"); *Wayne County v. Herrin,* 210 Ga.App. 747, 751, 437 S.E.2d 793, 798 (1993); *Pettus v. Smith,* 174 Ga.App. 587, 588, 330 S.E.2d 735, 737 (1985).

Importantly for the question here, Georgia courts have concluded that sheriffs, not counties, are vicariously liable under state law for the actions of their deputies in performing their law enforcement activities. *See, e.g., Lowe v. Jones County,* 231 Ga.App. 372, 373, 499 S.E.2d 348, 350 (1998) (concluding "deputy sheriffs are employees of the sheriff, not the county, and the county cannot be held

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sufficient cause, including incapacity or misbehavior in office. The charges must be exhibited to the court in writing and the facts tried by a jury." O.C.G.A. § 15-6-82.

vicariously liable as their principal");[20] *Brown,* 221 Ga.App. at 201, 470 S.E.2d at 787 (affirming summary judgment for Peach County because the Peach County sheriff, not Peach County, was the proper party to sue); *Pettus,* 174 Ga.App. at 588, 330 S.E.2d at 737-38 (affirming summary judgment for county board of commissioners and concluding, "[a]s the county commissioners had no control over the official duties of the deputy sheriff, they had no duty to determine whether a high-speed driving course rather than a defensive driving course was reasonably required to be supplied to deputy sheriffs"); *Chadwick v. Stewart,* 94 Ga.App. 329, 329, 94 S.E.2d 502, 503 (1956).[21]

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[20] In *Lowe,* the plaintiff asserted state law claims but also made a § 1983 claim. 231 Ga.App. at 373, 499 S.E.2d at 350. The Georgia court affirmed the trial court's grant of summary judgment for the defendants on the basis that there was no showing of deliberate indifference and no showing of any official county policy or custom. *Id.* at 374, 499 S.E.2d at 351. The Georgia court did not examine the underlying § 1983 issues of whether the sheriff was a final policymaker and, if so, whether the sheriff was a county or state policymaker.

[21] *Lowe, Brown,* and *Pettus* are clearly based on respondeat superior liability. Although the *Chadwick* court appeared to be applying common-law respondeat superior liability, it also cited Georgia Code Ann. § 24-201, which provided: "All sheriffs, deputy sheriffs, coroners, jailers, constables, and other officers of court shall be liable to all actions, suits, and disabilities whatever, which they, or either of them, shall incur in respect of any matter or thing whatever relating to or concerning their respective offices." This section is now codified in O.C.G.A. § 15-13-1 and provides: "All sheriffs, deputy sheriffs, coroners, jailers, constables, and other officers of court shall be liable to all actions and disabilities which they incur in respect of any matter or thing relating to or concerning their respective offices." The slight differences between these provisions are not material.

Likewise, Georgia courts have also concluded that the counties are not liable for, and not required to give sheriffs money to pay, judgments obtained against sheriffs in civil rights actions. *See Wayne County Bd. of Comm'rs v. Warren,* 236 Ga. 150, 152, 223 S.E.2d 133, 134 (1976) (stating "a county has no liability in connection with the violations of the civil rights of any person by a county officer"). The Georgia Supreme Court in *Warren* first quoted a Georgia statute stating that "A county is not liable to suit for any cause of action unless made so by statute." *Id.* at 151, 223 S.E.2d at 134.[22] Thus, by statute, the county was not liable. In addition, the Georgia Supreme Court concluded that "there is no duty of the county to furnish the sheriff with money to settle a civil rights judgment against him." *Id.* at 152, 223 S.E.2d at 134.[23]

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[22] The statute quoted in *Warren* was Georgia Code Ann. § 23-1502, which is now O.C.G.A. § 36-1-4. In the subsequent decision of *Chatham County Commissioners v. Rumary,* 253 Ga. 60, 315 S.E.2d 881 (1984), the Georgia Supreme Court held the Chatham County Board of Commissioners was required to pay a judgment against a deputy sheriff for damages in an auto collision because Chatham County had enacted a local act providing it would provide a defense and pay final judgment awards in courts. *Id.* at 61, 315 S.E.2d at 882. The Georgia Supreme Court emphasized that "[t]he nature of the Board's liability here is not that of *respondeat superior,* but exists solely by virtue of its voluntary and self-imposed obligation to provide indemnification for the acts of its employees committed during the performance of their duties." *Id.* There is no evidence in this case that Clinch County voluntarily has agreed to provide indemnification. To the contrary, Clinch County contends it is not liable because the sheriff is not a county policymaker.

[23] As discussed *infra,* Georgia sheriffs sued in their official capacity are protected by sovereign immunity unless waived, and sheriffs sued in their individual capacity are protected by qualified immunity.

G. County Civil Service Systems

Although counties may adopt civil service systems under O.C.G.A. § 36-1-21, sheriffs not only have authority under O.C.G.A. § 15-16-23 to appoint their deputies at their discretion, but also have authority under O.C.G.A. § 36-1-21 to decide whether their deputies are placed under a county civil service system. *See Brett v. Jefferson County,* 123 F.3d 1429, 1434 (11th Cir.1997); *Gwinnett County v. Yates,* 265 Ga. 504, 508, 458 S.E.2d 791, 794 (1995); *Wayne County v. Herrin,* 210 Ga.App. 747, 753, 437 S.E.2d 793, 799-800 (1993). For example, in *Herrin,* the Georgia court examined O.C.G.A. § 36-1-21, which allows counties to create a civil service system and to include employment positions with elected county officers in that system "upon the written application of the elected county officer." 210 Ga.App. at 748-50, 437 S.E.2d at 796-97.[24] The

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[24] In *Herrin* when his term was about to end, the Wayne County sheriff applied to have positions in the sheriff's office made subject to the Wayne County personnel system. 210 Ga.App. at 748, 437 S.E.2d at 796. Both Wayne County and Sheriff Warren "fully complied with all [the] requirements set forth in O.C.G.A. § 36-1-21(b) necessary to bring employees of the sheriff's office within the personnel system." *Id.* at 750, 437 S.E.2d at 797. Reconciling §§ 15-16-23 and 36-1-21, the Georgia court held "that once positions in a sheriff's office have been made subject to a personnel or civil service system, a sheriff's authority to appoint deputies pursuant to O.C.G.A. § 15-16-23 is limited to vacancies" created by resignation, retirement, or removal under the applicable personnel or civil service system. *Id.* at 753, 437 S.E.2d at 799.

This same O.C.G.A. § 36-1-21(b) was examined in *Brett,* 123 F.3d at 1434, in which this Court concluded that deputy sheriffs are "at will" employees of the sheriff. We agreed with the district court that "the former deputy sheriffs had no protected property interest under Georgia law because [Sheriff] Compton's efforts to place deputy sheriffs under the civil service system failed to satisfy the statutory requirements of O.C.G.A.

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Georgia court concluded (a) that "deeply embedded in our case law is the notion that the sheriff alone has the authority and power to appoint and fire deputies," but (b) that "the General Assembly has definitely and positively provided for the creation of county civil service systems and conferred on elected officials [such as the Wayne County sheriff] the ability to bring all employees in their office into the system." *Id.* at 751-53, 437 S.E.2d at 798-800.

H. Jailers Who Are Not Deputies

Under Georgia law, sheriffs may assign their deputies to work at the jail and perform the duties of jailer. *See Kendrick v. Adamson,* 51 Ga.App. 402, 402, 180 S.E. 647, 647 (1935) (deputy sheriff serving as jailer). Sheriff Peterson had his deputy Brown serve as chief jailer, so this case does not involve a jailer who is not a deputy. On the other hand, the sheriff may also appoint persons to serve as jailers who are not deputy sheriffs. *See Tate v. Nat'l Sur. Corp.,* 58 Ga.App. 874, 876, 200 S.E. 314, 315 (1938) (noting "[t]here was no evidence that the jailer was also a deputy").

We discuss jailers because the Georgia Code appears to treat jailers who are not deputies differently from deputies. For example, O.C.G.A. § 42-4-1 provides: "By virtue of their offices, sheriffs are jailers of the counties

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§ 36-1-21(b)." *Id.* Sheriff Compton had made an oral request, but had not completed the required written application. *Id.* There is no indication in this record that Clinch County has a civil service system or that Sheriff Peterson has taken any action to have his deputies subject to a county personnel system.

and have authority to appoint other jailers, subject to the supervision of the county governing authority, as prescribed by law." We could not locate, and the parties do not cite, any Georgia decision construing this version of O.C.G.A. § 42-4-1 or discussing precisely what is meant by "subject to the supervision of the county governing authority, as prescribed by law." For example, is it only the sheriff's appointment of jailers that is "subject to the supervision of the county governing authority, as prescribed by law," or is it also the performance of the jailer's duties? Our only guidance is *Wayne County v. Herrin,* 210 Ga.App. 747, 437 S.E.2d 793 (1993), where the Georgia court read the sheriff's power to appoint deputies under O.C.G.A. § 15-16-23, together with O.C.G.A. § 36-1-21, to mean that the sheriff may appoint his deputies "at will" but also may elect in writing to make their appointments subject to the county civil service system as prescribed by law in O.C.G.A. § 36-1-21. *Id.* at 752-53, 437 S.E.2d at 799-800. Thus, without any other guidance from the Georgia courts, we likewise read O.C.G.A. §§ 42-4-1 and 36-1-21 together to mean that the sheriff may appoint his jailers "at will" under O.C.G.A. § 42-4-1 but also may elect in writing to make their appointment subject to the county civil service system and thereby county supervision as prescribed by law in O.C.G.A. § 36-1-21.

In addition, while O.C.G.A. § 15-16-24 provides that "[s]heriffs are liable for the misconduct of their jailers as they are liable for their deputies," that same statute limits a sheriff's liability for a jailer's misconduct to three instances: (1) the sheriff personally benefitted financially, (2) the sheriff had actual knowledge of the nature of the misconduct and acted to cause or failed to act to prevent the misconduct, or (3) the sheriff "failed to exercise ordinary care

and diligence to prevent the condition or act which proximately caused the injury complained of." O.C.G.A. § 15-16-24.[25] In contrast, Georgia sheriffs are liable under respondeat superior for the actions of their deputies in the scope of their duties. *See, e.g., Lowe v. Jones County,* 231 Ga.App. 372, 373, 499 S.E.2d 348, 350 (1998); *Brown v. Jackson,* 221 Ga.App. 200, 201, 470 S.E.2d 786, 787 (1996). Thus, Georgia law appears to treat jailers who are not deputies somewhat differently.[26] However, because this

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[25] The "misconduct" referred to in O.C.G.A. § 15-16-24 "is a breach of some duty arising out of official capacity." *Tate v. Nat'l Sur. Corp.,* 58 Ga.App. 874, 875, 200 S.E. 314, 314 (1938). In *Tate,* the plaintiff, a municipal prisoner who was injured while in the county jail, brought an action against the surety of a sheriff's official bond. *Id.* at 874, 200 S.E. at 314. Interpreting the predecessor statute to O.C.G.A. § 15-16-24, the Georgia court determined that sheriffs may be liable for the misconduct of jailers only when this misconduct "is a breach of some duty arising out of official capacity." *Id.* at 875, 200 S.E. at 314. After describing the jailer's official duty as limited to the care of prisoners required to be received by the sheriff (which did not include municipal prisoners), the court concluded that "[a]s an officer the jailer owed no duty to the municipal prisoner." *Id.* at 875-76, 200 S.E. at 315.

[26] In this regard, Georgia law appears similar to Alabama law. In concluding that jailers were state officials in *Lancaster v. Monroe County,* 116 F.3d 1419, 1429 (11th Cir.1997), we noted differences between jailers and deputies:

> [U]nder Alabama law jailers carry out the sheriff's duty to maintain "legal custody and charge of the jail in his county and all prisoners committed thereto." Although jailers may not function as an "extension" of the sheriff to the same degree that deputies do, because a jailer cannot undertake every act that the sheriff could perform, nevertheless, jailers are responsible to the sheriff for their performance of state-mandated duties. Sheriffs and jailers have a close working relationship under Alabama law.
>
> That working relationship is not sufficiently intruded upon by county control to deny jailers Eleventh Amendment immunity

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case does not involve a jailer who is not a deputy, our belief about immunity is necessarily limited to sheriffs and sheriffs' deputies serving as jailers.

I. Lack of County Control

In contrast to the state's control over sheriffs, counties in Georgia do not create or control sheriffs' law enforcement powers, duties, and training, and have no role in either the investigation or suspension of sheriffs or in the hiring, training, supervision, and discipline of their deputies.

The county's lack of control over the sheriff's duties is in stark contrast to the powers the county exercises over its own police department. For example, a county police force is created only pursuant to a resolution or ordinance of the county governing authority followed by the approval of qualified county electors. O.C.G.A. § 36-8-1(b). Although county police officers have powers similar to those of sheriffs, county police officers are expressly subject to the "direction and control of the county governing authority." O.C.G.A. § 36-8-5. The fact that the county may have its own county police department is further indicia of how independent the sheriff's office is from the county.

We readily acknowledge that Georgia law grants the county significant control of the "purse strings" of the sheriff's office. The sheriff's salary is paid from county

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for official capacity claims. . . . Payment of salaries – especially when required by law – does not establish county control over the jailers for Eleventh Amendment purposes.

116 F.3d at 1429-30 (internal citations omitted).

funds. O.C.G.A. § 15-16-20. The county board sets the total amount of the sheriff's operating budget and pays the premium for the sheriff's official bond which is required to be $25,000. *See* O.C.G.A. §§ 36-5-22.1, 45-4-7, 15-16-5; *Chaffin v. Calhoun,* 262 Ga. 202, 203, 415 S.E.2d 906, 907 (1992). This financial control, however, is limited because (a) the Georgia legislature has mandated the minimum salary to be paid to a sheriff and the minimum official bond for which the county pays the premium, and (b) the Georgia Supreme Court has held that "the county commission may not dictate to the sheriff how that budget will be spent in the exercise of his duties," and the budget "must provide reasonably sufficient funds to allow the sheriff to discharge his legal duties." *Chaffin,* 262 Ga. at 203-04, 415 S.E.2d at 907;[27] *see also Boswell v. Bramlett,* 274 Ga. 50,

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[27] In *Chaffin,* the county, over the sheriff's objection, shifted the responsibility for patrolling and drug enforcement to the new county police department and reduced the sheriff's budget by forty-seven percent. 262 Ga. at 202-04, 415 S.E.2d at 907-08. The trial court granted the county's request for an injunction requiring the sheriff to cooperate in the implementation of the plan to transfer personnel and equipment to the newly created county police department. *Id.* at 202, 415 S.E.2d at 907. The Georgia Supreme Court affirmed, holding the trial court had not abused its discretion in finding that the remaining budget was sufficient to allow the sheriff to perform his duties. *Id.* at 204, 415 S.E.2d at 908. In doing so, the Georgia Supreme Court reaffirmed that: (1) "Sheriff Chaffin is an elected constitutional officer," citing Article IX, § 1, ¶ 3(a) of the Georgia Constitution; (2) "[t]he sheriff is not an employee of the county commission," citing *Board of Commissioners of Randolph County v. Wilson,* 260 Ga. 482, 396 S.E.2d 903 (1990); and (3) although the county commission has the power to create a county police force, "the commissioners could not divest the sheriff of his power and duty to enforce the laws and preserve the peace," either directly or indirectly by exercise of their fiscal authority or control of county property, citing *Wolfe v. Huff,* 232 Ga. 44, 45, 205 S.E.2d 254 (1974). *Chaffin,* 262 Ga. at 203-04, 415 S.E.2d at 907-08. In another

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52, 549 S.E.2d 100, 102-03 (2001) (concluding county government approves the superior court clerk's budget but does not control how that constitutionally-elected officer spends the budget). The Georgia Constitution further prevents counties from taking any action affecting any elective county office or the personnel thereof. Ga. Const. Art. IX, § 2, ¶ 1(c)(1). Payment of the sheriffs' salaries and equipment from county funds, when required by the state legislature, does not establish county control over the sheriff.[28]

In addition to setting the total amount of sheriffs' budgets, the counties in Georgia do control the jail structures. Specifically, counties have the responsibility "to erect or repair, when necessary, their respective . . . jails . . . and to furnish each with the furniture necessary for the different rooms, offices, and cells." O.C.G.A. § 36-9-5.

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budget battle between the sheriff and county commission in *Wilson*, the sheriff requested $70,000 to pay deputies but the county commission budgeted a lump sum of only $60,080. 260 Ga. at 482, 396 S.E.2d at 904. The Georgia Supreme Court held that the county commission did not abuse its authority, viewing the case as "involving the power of the commission to approve the sheriff's budget rather than the power of the sheriff to hire deputies." *Id.* at 484, 396 S.E.2d at 905.

[28] Similarly, Alabama sheriffs are elected by county voters and paid from county funds, but the Supreme Court in *McMillian* found these factors insufficient to establish county control over sheriffs. *See McMillian*, 520 U.S. at 791, 117 S.Ct. 1734 ("The county's payment of the sheriff's salary does not translate into control over [the sheriff], since the county neither has the authority to change his salary nor the discretion to refuse payment completely."). The Supreme Court also concluded that the ability of the county governing authority to reduce the sheriff's budget so long as it remains reasonable results in "attenuated and indirect influence over the sheriff's operations." *See id.* at 792, 117 S.Ct. 1734.

The county board's role in maintaining the jail structure itself, however, has no impact on the sheriff's law enforcement policies as to use of force or on his training, hiring, supervision, or discipline of his deputies.[29]

Manders relies primarily on O.C.G.A. § 42-5-2(a) which provides, in part: "[I]t shall be the responsibility of the governmental unit, subdivision, or agency having the physical custody of an inmate to maintain the inmate, furnishing him food, clothing, and any needed medical and hospital attention."[30] By this statute, the state has made

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[29] *See Turquitt,* 137 F.3d at 1289-90 (concluding that Alabama laws that require county commissions to erect and maintain jail structures do not relate to the daily operation of the jails and supervision of inmates). In *Griffin v. Chatham County,* 244 Ga. 628, 261 S.E.2d 570 (1979), the Georgia Supreme Court did conclude that the sheriff must accept city prisoners since the county commission had contracted with the City of Savannah to maintain city prisoners in the county jail. *Id.* at 629-30, 261 S.E.2d at 571-72. However, *Griffin* involved an act by the state legislature that was applicable to only Chatham County. That local act granted the Chatham County commissioners considerable power over the county jail as follows: "Said Commissioners (of Chatham County) shall have power to maker [sic] proper rules and regulations for the government and control of said jail of Chatham County, and the prisoners and inmates therein, and, except as hereinbefore provided, are hereby invested with the management and care of said jail." *Griffin,* 244 Ga. at 630 n. 8, 261 S.E.2d at 572 n. 8. In this case, there is no similar local act regarding the Clinch County jail.

[30] We reject Sheriff's Peterson's contention that O.C.G.A. § 42-5-2 does not apply to county jails merely because this provision is included in the chapter of Title 42 entitled "Correctional Institutions." *See Cherokee County v. North Cobb Surgical Assocs.,* 221 Ga.App. 496, 499, 471 S.E.2d 561, 564 (1996) ("Although [O.C.G.A. § 42-5-2] is included in the chapter of Title 42 that concerns correctional institutions, it nevertheless indicates that it is the intent of the legislature that governmental entities should pay for the medical expenses incurred by inmates who are in their physical custody."). Georgia courts have applied O.C.G.A. § 42-5-2 to require counties to provide medical care to

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counties responsible for providing certain necessities to inmates but has not imposed any county control over sheriffs' law enforcement activities regarding use of force at county jails. At most, O.C.G.A. § 42-5-2 imposes complementary but distinct duties upon counties and sheriffs but not control over sheriffs. Manders does not allege that he was denied any necessities listed in O.C.G.A. § 42-5-2, but challenges only Sheriff Peterson's law enforcement policies regarding use of force and his training, supervision, and discipline of his deputies as to use of force at the jail.

J. Sovereign Immunity

Finally, we discuss sovereign immunity under Georgia law for two reasons. On one hand, Georgia's extension of sovereign immunity to sheriffs evinces the sheriff's being an agent of the state. On the other hand, Georgia law also extends sovereign immunity to counties and permits a county's purchase of motor vehicle insurance to waive a sheriff's sovereign immunity in that regard, which reflects some county control over the sheriff's motor vehicle liability.

Specifically, the Georgia Constitution provides that "[s]overeign immunity extends to the state and all of its departments and agencies." Ga. Const. Art. I, § 2, ¶ 9(e). The Georgia Supreme Court has interpreted this extension

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inmates in county jails or detention centers. *See, e.g., Epps v. Gwinnett County,* 231 Ga.App. 664, 670, 499 S.E.2d 657, 663 (1998); *Macon-Bibb County Hosp. Auth. v. Houston County,* 207 Ga.App. 530, 531-32, 428 S.E.2d 374, 375-76 (1993).

of sovereign immunity to the "state and all of its departments and agencies" to insulate counties and all levels of government from state law claims unless immunity has been waived. *See, e.g., Cameron v. Lang,* 274 Ga. 122, 126, 549 S.E.2d 341, 346 (2001); *Gilbert v. Richardson,* 264 Ga. 744, 747, 452 S.E.2d 476, 479 (1994).[31] Thus, in Georgia, "[s]uits against 'public employees in their official capacities are in reality suits against the state and, therefore, involve sovereign immunity.'" *Cameron,* 274 Ga. at 126, 549 S.E.2d at 346 (quoting *Gilbert,* 264 Ga. at 750, 452 S.E.2d at 476); *Gilbert,* 264 Ga. at 750, 452 S.E.2d at 476 (quoting *Donaldson v. Dept. of Transp.,* 262 Ga. 49, 56, 414 S.E.2d 638, 643 (1992) (Hunt, J., concurring)); *Crisp County Sch. Sys. v. Brown,* 226 Ga.App. 800, 802, 487 S.E.2d 512, 515 (1997).

In addition, Georgia courts have concluded that sovereign immunity protects sheriffs sued in their official capacities from state law claims. *See, e.g., Seay v. Cleveland,* 270 Ga. 64, 65-66, 508 S.E.2d 159, 160-61 (1998); *Gilbert,* 264 Ga. at 754, 452 S.E.2d at 484.[32] The *Seay*

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[31] *But see City of Thomaston v. Bridges,* 264 Ga. 4, 7, 439 S.E.2d 906, 909 (1994) (holding phrase "state and all of its departments and agencies" does not include municipalities); *Thomas v. Hosp. Auth. of Clarke County,* 264 Ga. 40, 42, 440 S.E.2d 195, 196 (1994) (concluding hospital authority – although a governmental instrumentality – is not an agency or department of the state entitled to sovereign immunity).

[32] State sovereign immunity has no application in federal court in § 1983 cases. In contrast, the Eleventh Amendment grants immunity to states from suits in federal courts. *See, e.g., Miccosukee Tribe of Indians of Fla. v. Fla. State Athletic Comm'n,* 226 F.3d 1226, 1231 (11th Cir.2000); *Hufford v. Rodgers,* 912 F.2d 1338, 1340-41 (11th Cir.1990). In addition, when parties raise federal claims under § 1983 in state courts, then federal law must determine whether particular governmental

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plaintiffs sued the sheriff in his official capacity, alleging (1) that the sheriff was liable for his deputies' negligent disbursement of funds at a sheriff's sale and (2) that the sheriff negligently supervised his deputies. 270 Ga. at 64, 508 S.E.2d at 160. In *Seay,* the Georgia Supreme Court concluded the plaintiffs' "claims against [Sheriff] Seay in his official capacity are precluded under the doctrine of sovereign immunity and it has not been established in this case that such immunity has been waived." *Id.* at 65, 508 S.E.2d at 160.[33]

Sovereign immunity can be waived in Georgia but only by an act of the Georgia legislature. Ga. Const. Art. I, § 2, ¶ 9(e); *Cameron,* 274 Ga. at 126 n. 25, 549 S.E.2d at 346 n. 25. To effect a waiver, the legislative act must provide that sovereign immunity is waived and the extent of such waiver. Ga. Const. Art. I, § 2, ¶ 9(e); *see, e.g., Crisp*

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entities are subject to suit. *See Howlett v. Rose,* 496 U.S. 356, 375-78, 383, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990).

[33] The *Seay* court recognized that if the plaintiffs had sued the sheriff in his personal capacity for negligent supervision, the sheriff would have been protected from suit to the extent official (qualified) immunity applied. 270 Ga. at 65-66 & n. 1, 508 S.E.2d at 161 & n. 1. Georgia law distinguishes between (a) sovereign [governmental] immunity and (b) official [qualified] immunity. "[T]he doctrine of official immunity, also known as qualified immunity, offers public officers and employees limited protection from suit in their personal capacity." *Cameron,* 274 Ga. at 123, 549 S.E.2d at 344; *see Gilbert,* 264 Ga. at 750, 452 S.E.2d at 481; *Donaldson v. Dept. of Transp.,* 262 Ga. 49, 54, 414 S.E.2d 638, 642 (1992); *Carter v. Glenn,* 249 Ga.App. 414, 416, 548 S.E.2d 110, 112 (2001); *Chamlee v. Henry County Bd. of Educ.,* 239 Ga.App. 183, 184, 521 S.E.2d 78, 79-80 (1999); *Crisp County Sch. Sys.,* 226 Ga.App. at 802, 487 S.E.2d at 515. Because this appeal involves only official capacity claims, we do not address personal capacity suits against sheriffs.

County Sch. Sys., 226 Ga.App. at 801-02, 487 S.E.2d at 514-15.[34] The Georgia legislature enacted such a waiver statute in O.C.G.A. § 33-24-51, which gives "a county, or any other political subdivision of this state" the discretion to purchase insurance regarding motor vehicles and provides that its governmental immunity shall be waived to the extent of the amount of insurance so purchased.[35]

We mention this waiver statute because the Georgia Supreme Court has held that a county's purchase of insurance for the sheriff's motor vehicles waives the sheriff's sovereign immunity to the extent of the insurance. *See, e.g., Cameron,* 274 Ga. at 126, 549 S.E.2d at 346; *Gilbert,* 264 Ga. at 749-51, 452 S.E.2d at 480-82; *Woodard v. Laurens County,* 265 Ga. 404, 405, 456 S.E.2d 581, 583 (1995). Moreover, these three waiver decisions

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[34] In addition, the Georgia Constitution provides that "[n]o waiver of sovereign immunity ... shall be construed as a waiver of any immunity provided to the state or its departments, agencies, officers, or employees by the United States Constitution." Ga. Const. Art. I, § 2, ¶ 9(f).

[35] In Georgia, "the defense of sovereign immunity to tort liability cannot be waived by the mere purchase of insurance coverage," but "can only be waived pursuant to a 'legislative act which specifically provides that sovereign immunity is waived and the extent of such waiver.'" *Woodard v. Laurens County,* 265 Ga. 404, 405, 456 S.E.2d 581, 582 (1995) (quoting *Gilbert,* 264 Ga. at 748, 452 S.E.2d at 480). Sovereign immunity is also not waived if the claim in the particular case does not fall within the coverage of the relevant insurance. *See, e.g., Chamlee,* 239 Ga.App. at 186, 521 S.E.2d at 81; *Butler v. Dawson County,* 238 Ga.App. 808, 810-11, 518 S.E.2d 430, 432 (1999) (no waiver despite insurance where damages caused by county's negligence not connected with motor vehicles); *Long v. Hall County Bd. of Comm'rs,* 219 Ga.App. 853, 857, 467 S.E.2d 186, 190 (1996) (no waiver because liability was not predicated on official's use of insured vehicle but rather negligent failure to prevent inmate from escaping).

treated the official capacity claims against the sheriff as claims against the county, concluded the sheriff sued in his official capacity was entitled to the benefit of the county's sovereign immunity, and then waived the sheriff's immunity to the extent the county had purchased insurance.[36] While in *Seay* the sheriff's sovereign immunity appeared independently based, these motor vehicle-insurance cases appear to tie the sheriff's sovereign immunity to the county's. In sum, while Georgia extends sovereign immunity to sheriffs in their official capacities under its constitutional provision granting such immunity to the "state and all of its departments and agencies," the Georgia law also reflects some county control over waiver of the sheriff's immunity but only as to motor vehicles.

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[36] For example, in *Gilbert v. Richardson,* plaintiffs sued the sheriff in his official capacity under respondeat superior for his deputy's negligence while driving to an emergency call. 264 Ga. 744, 745, 452 S.E.2d 476, 478 (1994). Reversing the summary judgment for the sheriff, the Georgia Supreme Court observed, albeit in a footnote, that "[a]though Walker County is not named defendant in this action, Millard was sued in his capacity as Walker County sheriff. Accordingly, the [plaintiff's] claims are, in essence, claims against Walker County and [Sheriff] Millard may raise any defense available to the county, including sovereign immunity." *Id.* at 747 n. 4, 452 S.E.2d at 479 n. 4. The Georgia Supreme Court then concluded that "[b]ecause he is being sued in his official capacity, [the sheriff] is entitled to the benefit of Walker County's sovereign immunity defense. Since, however, the county has waived sovereign immunity to the extent of its liability insurance coverage, [Sheriff] Millard's sovereign immunity defense is likewise waived to that extent." *Id.* at 754, 452 S.E.2d at 484. The Georgia Supreme Court affirmed the grant of summary judgment as to the deputy, concluding that the deputy was entitled to official (qualified) immunity because she was "performing an official discretionary function when the accident occurred." *Id.* at 753, 452 S.E.2d at 483.

Having examined Georgia law, we now must weigh all of these Eleventh Amendment factors.

K. Weighing Eleventh Amendment Factors

Doing so, we first conclude that Sheriff Peterson is not an agent for Clinch County when performing his law enforcement duties regarding use of force.[37] Although sheriffs are designated "county officers," the Georgia Constitution and Code afford counties no authority, role, or control over (a) sheriffs' qualifications, minimum salary, and law enforcement powers and duties, (b) the investigation and suspension of sheriffs, or (c) the training, supervision, and discipline of his deputies at the jail. Sheriffs are

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[37] Although not addressing Eleventh Amendment immunity, the district courts in our circuit have reached similar conclusions in holding that Georgia sheriffs are not county policymakers under § 1983. *See Fletcher v. Screven County,* 92 F.Supp.2d 1377, 1379-80 (S.D.Ga.2000) (concluding in a § 1983 action that although Georgia law declares sheriffs to be county officers, and directs that counties elect and pay their sheriffs, it cedes to counties no meaningful level of control over a sheriff's law enforcement activities); *Frazier v. Smith,* 12 F.Supp.2d 1362, 1369 (S.D.Ga.1998) (declining to dismiss action against the sheriff in his official capacity as redundant to the action against the county because "Sheriff Smith acts independently of Camden County, except for the County's fiscal review and support of the Sheriff's department" and "[t]here is no evidence . . . to support the conclusion that Sheriff Smith is an agent of Camden County, or that the County ultimately is liable for his misconduct"); *Duffey v. Bryant,* 950 F.Supp. 1168, 1174-75 (M.D.Ga.1997) (reviewing a § 1983 action against the sheriff and his deputies for the wrongful death of a county jail inmate and granting summary judgment for the defendant Cook County Board of Commissioners and its chairman because "[i]t is well-settled in Georgia that a county and its commissioners are without authority over the sheriff or his deputies" and that its chairman "had no responsibility or authority for supervising or training officers").

independent and separate from county boards to such a degree that Georgia courts have held that counties are not liable under state law for the actions of the sheriff or his deputies or his deputy jailers. Indeed, the state has mandated that sheriffs alone hire and fire their own deputies and jailers.

We recognize that counties set the total amount of sheriffs' budgets and pay sheriffs' salaries, but counties cannot reduce the sheriffs' minimum salaries and cannot dictate how that budget is spent. Counties may waive the sheriffs' sovereign immunity for motor-vehicle claims by purchasing insurance, but Eleventh Amendment precedent now makes clear that insurance or indemnification provided by a third party, such as the county, is not material to whether there is a risk of an adverse judgment or potential legal liability. Counties construct and maintain the county jails and must provide inmates certain necessities, but counties have no authority, role, or control over the sheriffs' use-of-force policies at the jail. Thus, on balance, we believe sheriffs are not agents of counties when performing their law enforcement duties as to use of force.

Although Sheriff Peterson does not represent the county, this does not mean by default that he is an agent of the state. We note that Georgia courts have held that public hospital authorities in Georgia are not entitled to sovereign immunity because they are not part of either the county or the state. *See, e.g., Thomas v. Hospital Auth. of Clarke County,* 264 Ga. 40, 41-42, 440 S.E.2d 195, 196 (1994) (noting "that there is a clear distinction between a political subdivision such as a county and a corporate body such as a hospital authority, which is a creation of the county"). Unlike hospital authorities though, the sheriff's

office is not a corporate body but a constitutionally-elected office under the state Constitution, and Georgia courts have concluded sovereign immunity protects Georgia sheriffs in their official capacities. In addition, the parties here have not made the contention, nor have they cited any authority indicating, that the sheriff's department is a separate corporate body or even a separate legal entity capable of being sued under Georgia law.[38]

To some extent, Sheriff Peterson's adoption of use-of-force policies, his daily operation of the jail, and his supervision and discipline of deputies as to use of force are all independent from and unalterable by any governing body. Nonetheless, some outside control does exist, and it is the state, not the county, that possesses that control. For example, the state governs the qualifications, training, investigation, and suspension of sheriffs and their deputies. If a sheriff's use-of-force policies did permit misconduct, such as allowing excessive force against pre-trial inmates in the county jail, it is the state, not the county, that has the authority to act and has in fact exercised that authority by requiring annual training and prescribing a mechanism for investigation and suspension of sheriffs. In addition, it is the state that establishes the powers and duties of sheriffs, that empowers sheriffs to act as law enforcement officers, and that grants sheriffs, not counties, the physical custody of inmates in the counties' jails. These state laws result in the state controlling and regulating the sheriff's office in a meaningful way, albeit not on a daily basis.

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[38] *See supra* note 6.

Regarding what funds pay any adverse judgment, it is clear under Georgia law that counties are not liable for the misconduct of sheriffs and their deputies and that counties are not required to pay judgments arising from violations of the law by sheriffs in their official capacities. Further, under Supreme Court precedent, it is also true that a third-party's indemnity of, or purchase of insurance to pay, an adverse judgment does not defeat the cloak of immunity. Although counties provide funds for sheriffs' budgets, counties do so only because state law requires they fund the sheriffs' offices and sheriffs alone control how those funds are used.

On the other hand, although state funds are used to train and investigate sheriffs, we can locate no Georgia law providing sheriffs with state funds to pay an adverse judgment. Nonetheless, recent Eleventh Amendment decisions emphasize that it is the potential legal liability that counts. If by law the state treasury directly pays an adverse judgment, this one factor alone may possibly trigger Eleventh Amendment immunity and arguably make consideration of the other factors unnecessary. But, we cannot say that this one factor alone strips immunity unless state law expressly obligates states to pay adverse judgments against sheriffs in their official capacities. No such bright line of demarcation is usually drawn in Eleventh Amendment cases because immunity depends upon weighing various factors. The plaintiff here, as in *Lancaster* and *Carr,* has not shown that counties would pay a damages award, and indeed Georgia law provides counties would not. Thus, at a minimum, this factor does not tilt heavily one way or the other and does not defeat Sheriff Peterson's claim to immunity.

In sum, weighing all factors, we believe Sheriff Peterson in his official capacity is an agent of the state when performing his law enforcement duties regarding use of force and is entitled to Eleventh Amendment immunity.[39]

IV. CONCLUSION

Nonetheless, our binding precedent requires us to conclude that Manders's remaining § 1983 claims against Sheriff Peterson in his official capacity are claims against Clinch County and not barred by the Eleventh Amendment. Accordingly, we must affirm the denial of summary judgment to Sheriff Peterson in his official capacity.

AFFIRMED.

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[39] We also note that if sheriffs are agents of the state when executing certain law enforcement duties, then the plaintiff's § 1983 suit is subject to dismissal on the independent ground that neither states nor state officials acting in their official capacities are "persons" for purposes of § 1983. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). But that is a defense to liability and not a threshold immunity issue. In addition, our analysis here affects whether Sheriff Peterson is a policymaker for the state or county and the proceedings against Clinch County. But Clinch County is not a party to this appeal, and thus we address only the immunity defense of Sheriff Peterson in his official capacity.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-13606

(D.C. Docket No. 99-00042-CV)

WILLIE SANTONIO MANDERS,

Plaintiff-Appellee,

versus

THURMAN LEE, individually and as employee of the City of Homerville, ALAN BROWN, individually and as employee of the City of Homerville, BART CREWS, individually and as employee of the City of Homerville, CITY OF HOMERVILLE, CLINCH COUNTY, GEORGIA,

Defendants,

WINSTON PETERSON, individually and as employee of Clinch County, Georgia,

Defendant-Appellant.

On Appeal from the United States District Court
for the Middle District of Georgia

(Opinion March 14, 2002, 285 F.3d. 983, 11th Cir. 2002)

(Filed August 7, 2002)

Before EDMONDSON, Chief Judge, TJOFLAT, ANDERSON, BIRCH, DUBINA, BLACK, CARNES, BARKETT, HULL, MARCUS and WILSON, Circuit Judges.

BY THE COURT:

A member of this Court in active service having requested a poll on the suggestion of rehearing en banc and a majority of the judges in this Court in active service having voted in favor of granting a rehearing en banc,

IT IS ORDERED that the above cause shall be reheard by this court en banc. The previous panel's opinion is hereby VACATED.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

WILLIE SANTONIO MANDERS, Plaintiff, v. TRUMAN LEE, individually, and as employee of the City of Homerville, Georgia, THE CITY OF HOMERVILLE, GEORGIA, and WINSTON PETERSON, and ALAN BROWN, individually, and as employees of Clinch County, and CLINCH COUNTY, GEORGIA, Defendants.	:	7:99-CV-42(WLS)

ORDER

(Filed Jun. 7, 2001)

Presently before the Court is the Defendants Clinch County and Winston Peterson's Motion for Reconsideration (Doc. No. 131). The Defendants urge the Court to reconsider its Order, dated March 29, 2001. (Doc. No. 130).

Upon full review of the Defendant's brief in support of its Motion to Reconsider, the Court finds that the Defendants essentially disagree with the Court's finding as set out in its Order. The Order, dated March 29, 2001, clearly and adequately states its rationale for denying the motion. The Defendants have failed to raise any new issues, concerning either the law or the facts, that move the Court to alter or amend its prior decision. Accordingly, the Court

ORDERS AND ADJUDGES the Defendants Clinch County and Winston Peterson's Motion for Reconsideration (Doc. No. 131) should be, and hereby is, **DENIED**.

SO ORDERED, this 7th day of June, 2001.

/s/ W. Louis Sands
W. LOUIS SANDS, CHIEF JUDGE
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

6/11, 2001
Gregory J. Leonard, Clerk

by [Illegible]
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA VALDOSTA DIVISION

WILLIE SANTONIO MANDERS, Plaintiff, v. TRUMAN LEE, individually, and as employee of the City of Homerville, Georgia, THE CITY OF HOMERVILLE, GEORGIA, and WINSTON PETERSON, and ALAN BROWN, individually, and as employees of Clinch County, and CLINCH COUNTY, GEORGIA, Defendants.	7:99-CV-42(WLS)

ORDER

(Filed Mar. 29, 2001)

Presently before the Court is the Defendants Clinch County, Georgia and Winston Peterson's Motion for Summary Judgment (Doc. No. 109). For the following reasons, Defendants Clinch County, Georgia and Winston Peterson's Motion for Summary Judgment is hereby **GRANTED-in-part** and **DENIED-in-part**.

BACKGROUND

The following factual summary is based on the parties' statement of facts submitted in connection with the pending motion for summary judgment. Those material facts which are controverted and supported by deposition

testimony or other evidence are stated in the light most favorable to the Plaintiff, the nonmoving party.

On or about May 18, 1997, Plaintiff was arrested by Officer William Spikes of the Homerville Police Department and taken to the Clinch County Jail. (Spikes depo. at p. 15 and Brown depo. at p. 31). Plaintiff contends that either one of two scenarios occurred at the Clinch County Jail. First, Plaintiff alleges that he was struck repeatedly and had his head forced against the cell wall after Officer Spikes stated that Plaintiff had struck him earlier. Second, Plaintiff alleges that Defendant Brown knocked Spikes and Plaintiff to the floor of the holding cell, as Brown alleges. (Brown depo. at p. 32).

Plaintiff contends that as a result of the alleged beating, Plaintiff allegedly suffered whelps and swelling to his face and emotional injuries. Plaintiff further contends that he was admitted to a mental hospital as a result of the effects of the beating. (Manders depo. at pp. 106-107; 112, 117-118). In addition, Plaintiff alleges that Defendant Peterson and other deputies made Plaintiff write out a statement allegedly under duress in which Plaintiff stated that Plaintiff had provoked the beating. (Manders depo. at pp. 62-63).

Plaintiff contends that after the alleged incident Plaintiff and Plaintiff's mother, Cynthia Price, met with Defendant Peterson in Defendant Peterson's office. When Ms. Price allegedly complained to Defendant Peterson about the alleged beating that allegedly occurred the night before, Defendant Peterson allegedly told Ms. Price that is what happens "when they bite and scratch." (Price Affidavit, Para. 7).

DISCUSSION

I. SUMMARY JUDGMENT STANDARD

Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." The Court is required to "resolve all reasonable doubts about the facts in favor of the non-movant, and draw all justifiable inferences in his or her favor." *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1115 (11th Cir. 1993) (quotations and citations omitted).

The moving party carries the initial burden of showing that there is an absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986). The substantive law governing the case determines which facts are material, and "summary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). For issues on which the non-movant bears the burden of proof at trial, the moving party "simply may show – that is, point out to the district court – that there is an absence of evidence to support the non-moving party's case. Alternatively, the moving party may support its motion for summary judgment with affirmative evidence demonstrating that the non-moving party will be unable to prove its case." *Fitzpatrick*, 2 F.3d at 1116 (quotations and citations omitted).

If the moving party fails to overcome this initial burden, the Court must deny the motion for summary judgment without considering any evidence, if any, presented by the non-moving party. *Fitzpatrick*, 2 F.3d at 1116. If, on the other hand, the moving party overcomes this initial burden, then the non-moving party must show the existence of a genuine issue of material fact that remains to be resolved at trial. *Id.* Moreover, the adverse party may not respond to the motion for summary judgment by summarily denying the allegations set forth by the moving party. Rather, the adverse party "must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." Fed. R. Civ. P. 56(e).

II. ANALYSIS

A. Defendants contend that Plaintiff's claims against Clinch County, Georgia and Sheriff Peterson in his official capacity are barred because there exists no evidence of any unconstitutional policy, practice, or custom which proximately caused harm to the Plaintiff.

Defendants contend that the Plaintiff's claim against Defendant Peterson in his official capacity is simply another way of restating Plaintiff's claim against Clinch County, Georgia. *Busby v. City of Orlando*, 931 F.2d 764, 776 (11th Cir. 1991). Hence, Defendants apply their arguments in this section to both Defendants Clinch County, Georgia and Defendant Peterson.

In response, Plaintiff contends that two principles must be analyzed in order to bind the actions of Defendant Peterson to Defendant Clinch County, Georgia. First, whether Defendant Peterson acted for Defendant Clinch County, Georgia as a final policymaker in a particular area or on a particular issue. Second, whether Georgia law defines this authority. *McMillian v. Monroe County, Alabama*, 520 U.S. 781, 786 (1997). First, Plaintiff argues that Defendant Peterson admitted that he set the policy for the manner in which pre-trial detainees are treated in the Clinch County Jail. (Peterson depo. pp. 6, 12). Second, Plaintiff argues that under O.C.G.A. § 42-4-4 the county sheriff is the county official responsible to care for inmates incarcerated in the county jail. *Kendrick v. Adamson*, 51 Ga. App. 402, 180 S.E. 647 (1935).

"[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office," and, "[a]s such, it is no different from a suit against the State itself." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71, 109 S.Ct. 2304, 2312, 105 L.Ed.2d 45 (1989). The Court finds that Defendant Clinch County, Georgia and Defendant Peterson in his official capacity are considered to be the same in regards to liability in the captioned case. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71, 109 S.Ct. 2304, 2312, 105 L.Ed.2d 45 (1989).

1. General Government Entity Liability Standard

Defendants contend that a plaintiff seeking to impose liability on a local government entity under Title 42 Section 1983 must identify a government policy or custom

that caused the plaintiff's injury. *Board of the County Commissioners of Bryan County, Oklahoma v. Brown*, 520 U.S. 397, 403 (1997). Defendants further contend that "Governmental entity liability under Section 1983 attaches only where 'a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question.' *Pembauer v. City of Cincinnati*, 475 U.S. 469, 483 (1986)." (Bf. In Support of Dfs Clinch County, Georgia and Winston Peterson's Mot. for Sum. Judg., p. 6). In addition, Defendants assert that there must be some degree of fault on the part of the governmental entity in establishing or tolerating the custom or policy, and there must be a causal link between the custom or policy and the deprivation. *Fundiller v. City of Cooper City*, 777 F.2d 1436, 1442 (11th Cir. 1985). Defendants further assert that a single constitutional violation may result in municipal liability only when there is sufficient independent proof that the moving force behind the violation was a governmental policy or custom. *Vineyard v. County of Mary County, Georgia*, 990 F.2d 1207, 1211 (11th Cir. 1993).

In response, Plaintiff contends that "the inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact." *Canton v. Harris*, 489 U.S. 379, 388 (1988). Plaintiff further contends that the question to be answered in this context is not whether the training is adequate but, rather whether the inadequate training is "said to represent '[county policy].'" *Id.* at 390. Plaintiff continues by contending that the ultimate question is whether "the need for more or different training is so

obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of the city can reasonably be said to have been deliberately indifferent to the need." *Id.*

Plaintiff asserts that Defendant Clinch County had no policy or procedure and no training for the use of force in dealing with inmates at the Clinch County Jail. (Peterson depo., p. 9). Plaintiff further asserts that the force used against Plaintiff was a violation of his constitutional rights. *Graham v. Connor*, 490 U.S. 386 (1989).

The Court notes that a contradiction exists between the assertion that Defendant Clinch County had no policy or procedure and no training for the use of force in dealing with inmates at the Clinch County Jail (Peterson depo., p. 9) and the statement allegedly made by Defendant Peterson to Ms. Price "that is what happens when they bite and scratch." (Price Affidavit, Para. 7). Further, the Court notes that the statement allegedly made by Defendant Peterson to Ms. Price that is what happens "when they bite and scratch" (Price Affidavit, Para. 7) would, if believed by a trier of fact, satisfy Defendants' contention that a plaintiff seeking to impose liability on a local government entity under section 1983 must identify a government policy or custom that caused the plaintiff's injury. *Board of the County Commissioners of Bryan County, Oklahoma v. Brown,* 520 U.S. 397, 403 (1997).

Next, the Court notes that Defendant Peterson is the Clinch County representative who establishes the policy for use of force when dealing with detainees. Hence, the statement allegedly made by Defendant Peterson to Ms. Price that is what happens "when they bite and scratch" (Price Affidavit, Para. 7) would, if believed by a trier of

fact, satisfy Defendants' contention that "Governmental entity liability under Section 1983 attaches only where 'a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question.' *Pembauer v. City of Cincinnati*, 475 U.S. 469, 483 (1986)." (Bf. In Support of Dfs Clinch County, Georgia and Winston Peterson's Mot. for Sum. Judg., p. 6). In addition, the Court notes that the assertion that Defendant Clinch County had no policy or procedure and no training for the use of force in dealing with inmates at the Clinch County Jail (Peterson depo., p. 9) would, if believed by a trier of fact, satisfy Defendants' contention that there must be some degree of fault on the part of the governmental entity in establishing or tolerating the custom or policy, and there must be a causal link between the custom or policy and the deprivation. *Fundiller v. City of Cooper City*, 777 F.2d 1436, 1442 (11th Cir. 1985).

The Court finds that a genuine issue of material fact exists as to whether an unwritten policy or custom existed as to the treatment of detainees and if said unwritten policy did, in fact, exist whether Defendant failed to establish policy or procedure and training for the use of force in dealing with inmates at the Clinch County Jail in order to facilitate said unwritten policy or custom.

2. Defendants contend that there is no evidence in the record of an unconstitutional policy, practice, or custom

Defendants contend that "'to prove Section 1983 liability against a [County] based on custom, a plaintiff must establish a wide spread practice that 'although not

authorized by written law or express municipal policy, is so permanent and well settled as to constitute a 'custom or usage' with the force of law." *Floyd v. Waiters*, 133 F.3d 786, 795 (11th Cir. 1998), *certiorari granted, judgement vacated by Floyd v. Waiters*, 525 U.S. 802 (1998), *on remand, Floyd v. Waiters*, 171 F.3d 1264 (11th Cir. 1999), *certiorari denied* 120 S.Ct. 215 (1999)." (Bf. In Support of Dfs Clinch County, Georgia and Winston Peterson's Mot. for Sum. Judg., p. 8).

Defendants argue that Plaintiff has not presented evidence to permit a jury to draw a conclusion that there was a wide spread and persistent practice of jailers utilizing excessive force against arrestees at the Clinch County Jail. Further, Defendants argue that Plaintiff has not produced evidence regarding the causation element of a Section 1983 claim against a governmental entity. Defendants assert that regardless of what Defendant Brown's actions were on the night of May 18, 1997, Defendant Brown's actions were not prompted by any wide spread custom or policy put in place by Clinch County, Georgia.

In response, Plaintiff contends that "[o]nly where a municipality's failure to train its employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants can such a shortcoming be properly thought of as a city 'policy or custom' that is actionable under § 1983." *Canton v. Harris*, 489 U.S. 378, 389 (1988).

As stated above, the Court finds that a genuine issue of material fact exists as to whether an unwritten policy or custom existed as to the treatment of detainees and if said unwritten policy did, in fact, exist whether Defendant

failed to establish policy or procedure and training for the use of force in dealing with inmates at the Clinch County Jail in order to facilitate said unwritten policy or custom.

In addition, the Court finds that a genuine issue of material fact exists at [sic] to whether Defendants' failure to establish a policy or procedure and training for the use of force in dealing with inmates constitutes deliberate indifference.

3. Defendants contend that Plaintiff's failure to train claims are subject to summary judgment

Defendants contend that "the Supreme Court has explained that there are only 'limited circumstances' in which an allegation of a failure to train or supervise can be the basis for liability under Section 1983. [cit.]. The Supreme Court has instructed that these 'limited circumstances' occur only where the [County] inadequately trains or supervises its employees, this failure to train or supervise is a [County] policy, and that [County] policy causes the employees to violate a citizen's constitutional rights.' *Gold v. City of Miami*, 151 F.3d 1346, 1350 (11th Cir. 1998)." (Bf. In Support of Dfs Clinch County, Georgia and Winston Peterson's Mot. for Sum. Judg., p. 9). Defendants further contend that the standard for inadequate training claims are as follows:

. . .

> that the inadequacy of police training may serve as the basis of Section 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the

> police come into contact. This rule is most consistent with our admonition . . . that a municipality can be liable under Section 1983 only where its policies are the 'moving force [behind] the constitutional violation.' Only where a municipality's failure to train its' employees in a relevant respect evidences a 'deliberate indifference' to the rights of its inhabitants can such a shortcoming be properly thought of as a City 'policy or custom' that is actionable under Section 1983 . . . '[M]unicipal liability under Section 1983 attaches where – and only where – a deliberate choice to follow a course of action is made from among various alternatives' by city policy makers. Only where a failure to train reflects a 'deliberate' or 'conscious' choice by a municipality – a 'policy' as defined by prior cases – can a city be liable for such failure under Section 1983.

City of Canton v. Harris, 489 U.S. 378, 388-89 (1989).

Defendants argue that Plaintiff has not produced evidence that Defendant Peterson had knowledge of a need to train or supervise in the particular area of the treatment of arrestees by jailers yet made a deliberate choice not to take any action. In addition, Defendants argue that Plaintiff has not produced evidence that Defendant Peterson had prior knowledge of incidents involving jailers and arrestees.

In response, Plaintiff contends that the only question is whether Defendant Peterson was "deliberately indifferent" to the fact that the lack of training may lead to the beating that occurred.

As stated above, the Court finds that a genuine issue of material fact exists at to whether Defendants' failure to establish policy or procedure and training for the use of

force in dealing with inmates constitutes deliberate indifference.

4. Defendants contend that Supreme Court precedent bars Plaintiff's negligent hiring and retention theory under federal law

Defendants contend that "'to prevent municipal liability for a hiring decision from collapsing into respondeat superior liability, a court must carefully test the link between the policy maker's inadequate decision and the particular injury alleged.' *Board of Commissioners of Bryan County, Oklahoma v. Brown*, 520 U.S. 397, 410 (1997)." (Bf. In Support of Dfs Clinch County, Georgia and Winston Peterson's Mot. for Sum. Judg., p. 11). Thus, Defendants argue that there is no evidence that Defendants had any knowledge of prior problems with excessive force by Defendant Allen, nor is there anything in the record to indicate that Defendants became aware during Defendant Brown's employment that there existed a potential problem with excessive force against arrestees.

Plaintiff does not appear to respond to Defendants' arguments in this section.

In light of Plaintiff's failure to met [sic] his burden of showing that Defendants had any knowledge of prior problems with excessive force by Defendant Allen or that Defendants became aware during Defendant Brown's employment that there existed a potential problem with excessive force against arrestees, Defendants Clinch County, Georgia and Winston Peterson's Motion for Summary Judgment as to negligent hiring and retention theory under federal law is hereby **GRANTED**.

5. Defendants contend that the Plaintiff's claims against the County and Sheriff Peterson in his official capacity are barred by the "so obvious" doctrine.

Defendants contend that "'where the proper response . . . is so obvious to all without training or supervision, then the failure to train or supervise is generally not 'so likely' to produce a wrong decision as to support an inference of indifference by city policy makers to the need to train or supervise,' *Sewell v. Town of Hamilton*, 117 F.3d 488, 490 (11th Cir. 1997)." (Bf. In Support of Dfs Clinch County, Georgia and Winston Peterson's Mot. for Sum. Judg., p. 13). Defendants argue that no training is necessary to make it clear to jailers that a person cannot simply beat an arrestee repeatedly for no reason at all.

In response, Plaintiff contends that the "so obvious" doctrine is not so broad as to make every improper act committed by a government employee outside the scope of § 1983. *Sewell v. Town of Hamilton*, 117 F.3d 488, 490 (11th Cir. 1997).

As stated above, the Court finds that a genuine issue of material fact exists as to whether an unwritten policy or custom existed as to the treatment of detainees and if said unwritten policy did, in fact, exist whether Defendant failed to establish policy or procedure and training for the use of force in dealing with inmates at the Clinch County Jail in order to facilitate said unwritten policy or custom. Until the trier of fact resolves the aforementioned issues of material fact, the question of the "so obvious" doctrine cannot be reached. Additionally, as pointed out by Plaintiff, the "so obvious doctrine" is not so broad as to make every improper act committed by an employee outside the scope of § 1983.

B. Defendant Peterson contends he has no liability to the Plaintiff in his individual capacity

1. Federal Law Claims

Defendant Peterson in an exercise of caution addressed potential claims under both federal and state law against him in his individual capacity. Defendant Peterson contends that with regard to potential federal claims, "'supervisory liability [under Section 1983] occurs either when the supervisor personally participates in the alleged constitutional violation or when there is a causal connection between actions of the supervising official and the alleged constitutional deprivation. The causal connection can be established when a history of widespread abuse puts the responsible supervisor on notice of the need to correct the alleged deprivation, and he fails to do so. The deprivations that constitute widespread abuse sufficient to notify the supervising official must be obvious, flagrant, rampant, and of continued duration, rather than isolated occurrences.' *Braddy v. Florida Department of Labor and Employment Security*, 133 F.3d 797, 802 (11th Cir. 1998)." (Bf. In Support of Dfs Clinch County, Georgia and Winston Peterson's Mot. for Sum. Judg., p. 14). Defendant Peterson argues that in order for defendant Peterson to be held liable, Defendant Peterson "must have established a policy or custom which proximately caused a constitutional violation." (Bf. In Support of Dfs Clinch County, Georgia and Winston Peterson's Mot. for Sum. Judg., p. 14).

In response, Plaintiff argues that Defendant Peterson's failure to investigate Plaintiff's allegations and promulgate rules relating to use of force violated the rights of jail detainees in general and Plaintiff.

The Court finds that Plaintiff has not met his burden of showing that the alleged deprivations in the captioned case were obvious, flagrant, rampant, and of continued duration sufficient to notify the supervising official. *Braddy v. Florida Department of Labor and Employment Security*, 133 F.3d 797, 802 (11th Cir. 1998). Therefore, Defendant Winston Peterson's Motion for Summary Judgment as to Plaintiff's § 1983 claim against Defendant Peterson in his individual capacity is hereby **GRANTED**.

2. State Law Claims

Defendant Peterson in an exercise of caution addressed potential claims for negligent retention and hiring under state law against him in his individual capacity. Defendant Peterson contends that "'an employer's liability for negligent hiring or retention of an employee requires proof that the employer knew or should have known of the employee's propensity to engage in the conduct which caused the plaintiff's injury. Proof of such leaning must consist of evidence substantially related to the injury causing conduct. Lying about employment qualifications, for example does not constitute evidence of violent tendencies.' *Harper v. City of East Point*, 237 Ga. App. 375, 376 (1999)." (Bf. In Support of Dfs Clinch County, Georgia and Winston Peterson's Mot. for Sum. Judg., p. 15). Defendant Peterson argues that there is no evidence to support a claim of negligent retention and hiring against Defendant Peterson.

In addition, Defendant Peterson asserts the doctrine of qualified immunity as a defense to Plaintiff's claims as to Defendant Peterson in his individual capacity. (Bf. In Support of Dfs Clinch County, Georgia and Winston

Peterson's Mot. for Sum. Judg., FN 4, p. 15). Defendant Peterson argues that Plaintiff will not be able to establish that Defendant Peterson violated clearly established constitutional law, nor point to any fact specific cases which would have indicated to him that a reasonable Sheriff in his position would have acted any differently than Defendant Peterson acted in the captioned case.

Next, Defendant argues that the actions about which the Plaintiff complains in the present case were discretionary functions being carried out by the Sheriff. Defendant Peterson further argues that there is no evidence, or even an allegation, of actual malice by Defendant Peterson. *Merrow v. Hawkins,* 266 Ga. 390 (1996). Thus, Defendant Peterson argues that he is entitled to official immunity from suit.

In response, Plaintiff contends that there is no official immunity defense for discretionary acts negligently performed or for discretionary acts performed with actual malice or an intent to injure. *Woodard v. Laurens County*, 265 Ga. 404, 456 S.E.2d 581 (1995). Plaintiff admits that "the record in this case is not altogether clear that Defendant Peterson's refusal to investigate the alleged beating, his attempt to cover it up, or to promulgate policies and procedures after he was told of the beating does not constitute negligent performance of a ministerial function or actual malice." (Pf's Response to bf. In Support of Dfs Clinch County, Georgia and Winston Peterson's Mot. for Sum. Judg., p. 16)

In light of Plaintiff's failure to meet his burden of showing that Defendant had any knowledge of prior problems with excessive force by Defendant Allen or that Defendant became aware during Defendant Brown's

employment that there existed a potential problem with excessive force against arrestees, Defendant Winston Peterson's Motion for Summary Judgment as to negligent hiring and retention theory under state law is hereby **GRANTED**.

C. Defendants contend that Plaintiff is not entitled to injunctive relief against Clinch County, Georgia

Defendants contend that Plaintiff's request in his Amended Complaint that the Court assume control of the operation of the Clinch County Sheriff's Department is barred by United States Supreme Court Precedent. Defendants argue that Plaintiff lacks the requisite personal stake in the outcome. *Rizzo v. Goode*, 423 U.S. 362, 372 (1976).

Plaintiff does not respond to the Defendants' argument against injunctive relief.

In light of Plaintiff's failure to respond and lack of a requisite personal stake in the outcome, Defendants Clinch County, Georgia and Winston Peterson's Motion for Summary Judgment as to Plaintiff's request for injunctive relief is hereby **GRANTED**.

CONCLUSION

As stated above, genuine issues of material fact exist in the captioned case as to Plaintiff's § 1983 claim against Defendants Clinch County, Georgia and Winston Peterson, in his official capacity. Thus, Defendants Clinch County, Georgia and Winston Peterson's Motion for Summary Judgment as to Plaintiff's § 1983 claim is hereby **DENIED**.

In addition, Defendants Clinch County, Georgia and Winston Peterson's Motion for Summary Judgment as to negligent hiring and retention theory under federal law is hereby **GRANTED**. Defendants Clinch County, Georgia and Winston Peterson's Motion for Summary Judgment as to Plaintiff's request for injunctive relief is hereby **GRANTED**. Defendant Winston Peterson's Motion for Summary Judgment as to Plaintiff's § 1983 claim against Defendant Peterson in his individual capacity is hereby **GRANTED**. Defendant Winston Peterson's Motion for Summary Judgment as to negligent hiring and retention theory under state law is hereby **GRANTED**.

SO ORDERED, this 29th day of March, 2001.

/s/ W. Louis Sands
W. LOUIS SANDS,
CHIEF JUDGE
UNITED STATES
DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

WILLIE SANTONIO MANDERS Plaintiff, v. TRUMAN LEE, and CHRIS CREWS, a/k/a BART CREWS, individually, and as employees of the City of Homerville, the CITY OF HOMERVILLE, GEORGIA, and WINSTON PETERSON, and ALAN BROWN, individually, and as employees of Clinch County, and CLINCH COUNTY, GEORGIA Defendants	)	CIVIL ACTION FILE NO. 7:99-CV-42

MOTION FOR RECONSIDERATION OF DENIAL OF SUMMARY JUDGMENT BY CLINCH COUNTY, GEORGIA AND WINSTON PETERSON, IN HIS OFFICIAL CAPACITY

COME NOW, Clinch County, Georgia and Winston Peterson, in his official capacity, and file this their Motion for Reconsideration of the denial of summary judgment. This motion is made pursuant to Middle District of Georgia Rule 7.6.

The Motion for Reconsideration is being filed for two reasons. First, both the parties, and the court, overlooked material, controlling law from the United States Supreme

Court and the Eleventh Circuit Court of Appeals which applies to the liability of counties and sheriffs under federal law.

In the parties' briefs, and the court's order, it was assumed that county sheriffs in Georgia perform their duties in the area of law enforcement as county officials. However, recent decisions by the United States Supreme Court, and the Eleventh Circuit Court of Appeals, illustrate that county sheriffs in Georgia are characterized as state officials with regard to their law enforcement duties. As a result, sheriffs in their official capacities are protected by the Eleventh Amendment from suit. Additionally, a county has no liability under 42 U.S.C. § 1983 when it lacks the ability to control the activities of a sheriff under state law.

Second, even if a sheriff, under Georgia law, is a county official, both Clinch County, Georgia and Winston Peterson are still entitled to summary judgment based upon the application of federal law to the undisputed facts in this case.

I. UNDER GEORGIA LAW, THE ACTIONS OF SHERIFFS REPRESENT STATE POLICY, RATHER THAN COUNTY POLICY, THEREFORE, SHERIFF PETERSON, IN HIS OFFICIAL CAPACITY, IS ENTITLED TO ELEVENTH AMENDMENT IMMUNITY.

A state official in his "official capacity" is not subject to suit under 42 U.S.C. § 1983 because such claims are barred by the Eleventh Amendment. *See, Will v. Michigan Department of State Police*, 491 U.S. 58 (1989).

Though the court, and the parties, previously analyzed this case assuming that Sheriff Peterson established county policy by virtue of his actions in this case, it appears that the U.S. Supreme Court and the Eleventh Circuit would deem Sheriff Peterson to establish "state" policy with regard to his law enforcement responsibilities. *See*, *McMillan v. Monroe County*, 520 U.S. 781, 117 S.Ct. 1734 (1997); *Turquitt v. Jefferson County*, 137 F.3d 1285 (11th Cir. 1998). Relying upon *McMillan*, *supra*, the Eleventh Circuit in *Turquitt* ruled that an Alabama sheriff is a state policy maker for purposes of Section 1983 liability when operating a jail. The Eleventh Circuit set out a frame work to determine whether a sheriff establishes county, or state, policy with regard to his law enforcement responsibilities. 137 F.3d at 1287. The Eleventh Circuit noted that the ultimate "answer to this question turns on state law . . . " *Id.* at 1288.

"Furthermore, the federal judiciary must 'respect state and local law's allocation of policy making authority,' and not 'assume that final policymaking authority lies in some entity other than that in which state law places it.'" *Id.* After reviewing Alabama law, the Eleventh Circuit determined that Alabama counties possessed little authority over the operation of the county jail, except for funding obligations. *Id.* at 1289. The court also went on to hold that sheriffs, under Alabama law, established state policy when carrying out their duties related to the operation of a jail, rather than county policy. The primary reason for the Eleventh Circuit doing so was that Alabama's Constitution and statutory scheme established the duties of the sheriff. It was clear that the county governing authority did not create or enforce the sheriff's duties.

It does not appear that the Eleventh Circuit, or the Middle District, has had the opportunity to evaluate the impact of *McMillan* and *Turquitt* on Georgia sheriffs and counties. However, a recent decision rendered in the Southern District of Georgia has addressed the impact. *Fletcher v. Screven County*, 92 F.Supp.2d 1377 (S.D. Ga. 2000), Judge Edenfield held that *McMillan* required finding that a Georgia sheriff's conduct in the area of law enforcement "cannot be said to constitute county policy for Section 1983 liability purposes. *Id.* at 1380. Judge Edenfield's analysis followed the directives of the Supreme Court set down in *McMillan*.

> . . . [T]he pivotal issue in determining whether a sheriff makes law enforcement policy for his county or state is which body ultimately has the power to control or direct the sheriff's performance of his law enforcement duties. After all, a sheriff's actions cannot be said to 'speak . . . for the local government,' . . . if that local government has no say in what action he takes.
>
> Georgia law denies the county that requisite control. First, sheriffs are constitutional officers, rather than county employees. *Board of Commissions of Randolph County v. Wilson*, 260 Ga. 482 [ ]. (1990). Second, sheriff's duties are prescribed by state statute, *See*, O.C.G.A. § 15-16-10, and a county may not use its budgetary power to deny the sheriff funds to carry out his law enforcement duties or dictate how they should be discharged. *Chaffin v. Calhoun*, 262 Ga. 202, 203 [ ] (1992). Third, a sheriff is subject to investigation and suspension by the governor, rather than by county officials. O.C.G.A. § 15-16-26.
>
> Fourth, while a sheriff is paid from county funds, his minimum salary is set by the state.

> Each county is 'under a duty to adopt a budget making reasonable and adequate provision for the personnel and equipment necessary to enable the sheriff to perform his duties of enforcing the law and preserving the peace.'". *Chaffin*, 262 Ga. at 203.

Fletcher, *supra*, 92 F.Supp.2d at 1379-80.

It is also noteworthy that Judge Edenfield recognized that a contrary result had been reached by a court in the Middle District, *Hamilton v. Cannon*, 864 F.Supp. 1332 (M.D. Ga. 1994). As noted by Judge Edenfield, *Hamilton* was decided before the Supreme Court's decision in *McMillan* and does not appear to reflect the law after *McMillan*.

"The [Eleventh Amendment] bar is present 'even when a state is not named as a party of record, if for all practical purposes the action is against the state.'" *Brewer v. Purvis*, 816 F.Supp. 1560, 1569 (M.D. Ga. 1993), *aff'd* without opinion 44 F.3d 1008 (11th Cir. 1995), *cert. den.* 514 U.S. 1111 (1995) (granting Eleventh Amendment immunity to state employees in their "official capacities"). "Consequently, [the defendant] . . . [is] entitled to Eleventh Amendment immunity in [his] official capacit[y]." *Id.*

Though the Eleventh Amendment does not preclude official capacity claims seeking *prospective injunctive relief*, this is no longer such a case. *Thomas v. Devries*, 834 F.Supp. 398, 401 (M.D. Ga. 1993), *aff'd* without opinion 36 F.3d 95 (11th Cir. 1994). Though the plaintiff sought injunctive relief in this case, the court granted summary judgment against the defendant on that claim already. Order of March 29, 2001, p. 15.

Based upon Eleventh Amendment immunity. Sheriff Peterson, in his official capacity, is entitled to summary judgment in his favor.[1]

II. SINCE SHERIFF PETERSON ESTABLISHES STATE, NOT COUNTY, POLICY, CLINCH COUNTY, GEORGIA IS ENTITLED TO SUMMARY JUDGMENT.

"The county cannot be liable for the harms that befall jail inmates due to the improper operation of the jail or negligent supervision of its inmates because the county has no responsibility in that area." *Turquitt*, 137 F.3d at 1291. "Local governments can never be liable under Section 1983 for the acts of those whom the local government has no authority to control." *Id.* at 1292. "In addition, a local government can only be liable under Section 1983 for injuries which the government itself caused, [cit.] and causation necessarily implies control." *Id. See also, McMillan, supra*; and *Fletcher, supra*.

Based upon applicable law, Clinch County, Georgia cannot be liable under 42 U.S.C. § 1983 for policies that are attributable to Sheriff Winston Peterson. Consequently, Clinch County, Georgia is entitled to summary judgment in its favor.

---

[1] The court has already granted summary judgment to Sheriff Peterson in his individual capacity. *See*, Order of March 29, 2001, p. 13.

III. EVEN IF SHERIFF PETERSON SETS COUNTY POLICY, SHERIFF PETERSON, IN HIS OFFICIAL CAPACITY, AND CLINCH COUNTY ARE STILL ENTITLED TO SOVEREIGN IMMUNITY.

The court's March 29, 2001 order appears to hold that a financial issue requiring resolution by a jury is created in this case based solely upon the statement in the affidavit of plaintiff's mother that she was told by Sheriff Winston Peterson, "that happens sometime when they bite and scratch." (Price Affidavit at ¶7). Defendants point out that, even if such statement was made (which is denied) such a vague, ambiguous, and unfocused statement cannot, as a matter of law, create a factual issue on a policy, practice and custom claim under 42 U.S.C. § 1983.

First, the defendants point out that "[t]o prove Section 1983 liability against a [county] based on custom, a plaintiff must establish a *wide spread practice* that 'although not authorized by written law or expressed municipal policy, is so *permanent and well settled* as to constitute a 'custom or usage' with the force of law.'" *Floyd v. Waiters*, 133 F.3d 786, 795 (11th Cir. 1998), *certiorari granted, judgment vacated* by *Floyd v. Waiters*, 525 U.S. 802 (1998), *on remand*, *Floyd v. Waiters*, 171 F.3d 1264 (11th Cir. 1999), *cert. den.* 120 S.Ct. 215 (1999) (emphasis supplied). The plaintiff in this case "presented no similar evidence of extraordinary, continuous misconduct on the part of [Clinch County] jailers. . . . " *Brown v. City of Alba*, 754 F. Supp. 1551, 1559 (N.D. Alabama 1990).

To show that conduct is sufficiently persistent to constitute a custom, a plaintiff must produce evidence regarding how long standing the practice is, the number and percentage of officials engaged in the practice, and the gravity of the conduct. *See*, Section 1983 litigation, claims

and defenses, *Schwartz and Kirklin*, 3d Ed. § 1(b), p. 79; *Bennett v. City of Slidell*, 728 F.2d 762 (5th Cir. 1984).

The statement attributed to Sheriff Peterson provides no evidence regarding any specific number of alleged incidents, when they occurred, the identification of officials involved in the practice, nor the gravity of the conduct. In fact, the statement attributed to Sheriff Peterson by the plaintiff is so vague and ambiguous that it does not necessarily imply that Sheriff Peterson was even referring to such conduct happening at the Clinch County Jail. The statement, as relayed by plaintiff's mother, could simply refer to other corrections facilities or custodial scuffles in general. Though Sheriff Peterson denies making any such comment, the comment placed in the record does nothing to establish Clinch County policy.

Again, "[u]nfocused evidence of unrelated constitutional violations is simply not relevant to the question of whether a municipal decision maker caused the violation of the specific federal rights of the plaintiff before the court. . . . [Plaintiff's] proffered evidence . . . is insufficiently precise to establish . . . a municipal policy or custom that actually could have caused [his] specific injuries." *Carter v. Morris*, 164 F.3d 215, 218-219 (4th Cir. 1999).

Further, the defendants reiterate that it is entirely undisputed, and in fact admitted by plaintiff, that no evidence exist [sic] that Allen Brown was aware of any policy, practice, or custom of Clinch County, Georgia other than the clearly constitutional policies set forth in the Sheriff's Department's Policy and Procedure Manual. It was also undisputed that Brown was not aware of any prior incidents of excessive force. As a result, plaintiff created no

question of fact regarding whether Clinch County policy was the "moving force [behind]" any alleged constitutional violation. *Polk County v. Dodson*, 454 U.S. 312 (1981).

Both Sheriff Peterson in his official capacity and Clinch County, Georgia are entitled to summary judgment.

IV. CONCLUSION.

This court should reconsider its March, 29, 2001 order to the extent it denied summary judgment to Sheriff Peterson, in his official capacity, and Clinch County, Georgia. Those defendants should be granted summary judgment in their favor.

This 16th day of April, 2001.

WHELCHEL, BROWN, READDICK
& BUMGARTNER

BY /s/ Richard K. Strickland
Richard K. Strickland
Georgia Bar No: 687830

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing pleading by addressing same to:

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and depositing same in the United States Mail with sufficient postage affixed to assure delivery.

This 16th day of April, 2001.

WHELCHEL, BROWN, READDICK & BUMGARTNER

BY /s/ Richard K. Strickland
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Georgia Bar No: 687830

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GEORGIA CONSTITUTION

Art. IX, § 1, ¶3(a)-(b)

Paragraph III. County officers; election; term; compensation. (a) The clerk of the superior court, judge of the probate court, sheriff, tax receiver, tax collector, and tax commissioner, where such office has replaced the tax receiver and tax collector, shall be elected by the qualified voters of their respective counties for terms of four years and shall have such qualifications, powers, and duties as provided by general law.

(b) County officers listed in subparagraph (a) of this Paragraph may be on a fee basis, salary basis, or fee basis supplemented by salary, in such manner as may be directed by law. Minimum compensation for said county officers may be established by the General Assembly by general law. Such minimum compensation may be supplemented by local law or, if such authority is delegated by local law, by action of the county governing authority.

Art. IX, § 1, ¶2(c)(1)

Paragraph II. Number of counties limited; county boundaries and county sites; county consolidation. (a) There shall not be more than 159 counties in this state.

(b) The metes and bounds of the several counties and the county sites shall remain as prescribed by law on June 30, 1983, unless changed under the operation of a general law.

(c) The General Assembly may provide by law for the consolidation of two or more counties into one or the division of a county and the merger of portions thereof into other counties under such terms and conditions as it may prescribe; but no such consolidation, division, or merger

shall become effective unless approved by a majority of the qualified voters voting thereon in each of the counties proposed to be consolidated, divided, or merged.

Art. IX, §1, ¶1

Paragraph I. Counties a body corporate and politic. Each county shall be a body corporate and politic with such governing authority and with such powers and limitations as are provided in this Constitution and as provided by law. The governing authorities of the several counties shall remain as prescribed by law on June 30, 1983, until otherwise provided by law.

Art. VI, §4, ¶1

SUPERIOR COURTS

Paragraph I. Jurisdiction of superior courts. The superior courts shall have jurisdiction in all cases, except as otherwise provided in this Constitution. They shall have exclusive jurisdiction over trials in felony cases, except in the case of juvenile offenders as provided by law; in cases respecting title to land; in divorce cases; and in equity cases. The superior courts shall have such appellate jurisdiction, either alone or by circuit or district, as may be provided by law.

OFFICIAL CODE OF GEORGIA

O.C.G.A. § 15-12-78.

Grand juries shall carefully inspect the sanitary condition of the jails of their respective counties at each regular inspection provided for in Code Section 15-12-71 and in their general presentments shall make such recommendations to the county governing authorities as may be

necessary to provide for the proper heating and ventilation of the jails, which recommendations the county governing authorities shall strictly enforce. The grand juries shall also make such presentments as to the general sanitary condition of the jails and the treatment of the inmates as the facts may justify.

O.C.G.A. § 1-3-3 (7).

As used in this Code or in any other law of this state, the term:

(7) 'County governing authority' means the board of county commissioners, the sole county commissioner, or the governing authority of a consolidated government.

O.C.G.A. § 15-6-8 (1).

The superior courts have authority:

(1) To exercise original, exclusive, or concurrent jurisdiction, as the case may be, of all causes, both civil and criminal, granted to them by the Constitution and laws;

O.C.G.A. § 15-6-24.

Any contingent expenses incurred in holding any session of the superior court, including lights, fuel, stationery, rent, publication of grand jury presentments when ordered published, and similar items, such as taking down testimony in felony cases, etc., shall be paid out of the county treasury of such county upon the certificate of the judge of the superior court and without further order.

O.C.G.A. § 15-6-82.

A clerk of the superior court is subject to be removed from office by the judge of the court for any sufficient cause,

including incapacity or misbehavior in office. The charges must be exhibited to the court in writing, and the facts tried by a jury. The clerk shall be entitled to a copy of the charges three days before trial.

O.C.G.A. § 15-12-62.

(a) The judges of the superior courts, at the close of each term, in open court, shall unlock the box and break the seal and shall cause to be drawn from compartment number 'one' not less than 18 nor more than 75 names to serve as grand jurors at the next term of the court, all of which names shall be deposited in compartment number 'two.' When all the names have been drawn out of compartment number 'one,' then the drawing shall commence from compartment number 'two,' and the tickets shall be returned to number 'one,' and so on alternately. No name so deposited in the box shall, on any pretense whatever, be thrown out of it or destroyed except when it is satisfactorily shown to the judge that the juror is dead, removed out of the county, or otherwise disqualified by law.

(b) In those counties utilizing mechanical or electronic means for the selection of jurors, subsection (a) of this Code section shall not apply. Rather, the judges of the superior court shall draw a grand jury from the 'electronic jury box' in the same manner and under the same plan that trial juries are drawn. They shall draw not less than 18 nor more than 75 names to serve as grand jurors at the next term of court.

O.C.G.A. § 15-12-61.

(a) A grand jury shall consist of not less than 16 nor more than 23 persons. The votes of at least 12 grand jurors shall be necessary to find a bill of indictment or to make a

presentment. Three alternate grand jurors may be sworn and, subject to the maximum number fixed in this subsection, may serve when any grand juror dies, is discharged for any cause, becomes ill, or is for other cause absent during any sitting. Alternate grand jurors may serve as members of inspection and examination committees with the same authority and responsibilities as grand jurors and without regard to the maximum limitation on the number of grand jurors fixed herein. However, nothing in this Code section shall limit the authority of a judge of the superior court to replace a grand juror.

(b) The grand jury shall be authorized to request the foreman or clerk of the previous grand jury to appear before it for the purpose of reviewing and reporting the actions of the immediately preceding grand jury if the succeeding grand jury determines that such service would be beneficial. While serving a succeeding grand jury, the foreman or clerk of the immediately preceding grand jury shall receive the same compensation as do other members of the grand jury. Any person serving as foreman or clerk of a grand jury and then being requested to report to an immediately succeeding grand jury shall not be eligible to again serve as a grand juror during one year following the conclusion of such earlier service.

O.C.G.A. § 15-12-65.

(a) Counties utilizing nonmechanical selection procedures. Within 30 days after the grand jurors have been drawn by a judge of the superior court or within five days after they have been drawn by the judge of the probate court and the commissioners as provided in Code Section 15-12-64, the clerk of the superior court shall issue and deliver to the sheriff or his or her deputy a precept

containing the names of the persons drawn as grand jurors. Upon the receipt of the precept, the sheriff or his or her deputy shall cause the persons whose names are therein written to be served personally or by leaving the summons at their most notorious places of residence at least ten days prior to the term of the court the jurors were drawn to attend; provided, however, the sheriff may, in his or her discretion, serve the persons whose names appear on the precept by sending the summons by certified United States mail or statutory overnight delivery, return receipt requested, addressed to their most notorious places of abode at least 15 days prior to the term of the court the jurors were drawn to attend. Failure to receive the notice personally shall be a defense to a contempt citation.

(b) Counties utilizing mechanical or electronic selection procedures. In those counties utilizing mechanical or electronic means for the selection of jurors, the sheriff of the county may authorize the clerk in writing to mail all summonses by first-class mail addressed to the jurors' most notorious places of abode at least 25 days prior to the term of the court the jurors were drawn to attend. Failure to receive the notice personally shall be a defense to a contempt citation. This subsection shall in no way affect the provisions for drawing jurors and the service upon jurors by other courts in the county.

O.C.G.A. § 15-12-68.

(a) The following oath shall be administered to witnesses in criminal cases before the grand jury:

'Do you solemnly swear or affirm that the evidence you shall give the grand jury on this bill of indictment or

presentment shall be the truth, the whole truth, and nothing but the truth? So help you God.'

(b) Any oath given that substantially complies with the language in this Code section shall subject the witness to the provisions of Code Section 16-10-70.

O.C.G.A. § 15-12-71.

(a) The duties of a grand jury shall be confined to such matters and things as it is required to perform by the Constitution and laws or by order of any superior court judge of the superior court of the county.

(b)(1) The grand jury shall at least once in each calendar year inspect the condition and operations of the county jail. The grand jury shall at least once in every three calendar years inspect and examine the offices and operations of the clerk of superior court, the judge of the probate court, and the county treasurer or county depository. If the office of the district attorney is located in the county in which the grand jury is impaneled, the grand jury shall inspect and examine the offices of the district attorney at least once in every three calendar years. If the offices of the district attorney are located in a county other than the county in which the grand jury is impaneled, the grand jury may inspect the offices of the district attorney as the grand jury deems necessary or desirable.

(2) In addition to the inspections provided for in paragraph (1) of this subsection, the grand jury shall, whenever deemed necessary by eight or more of its members, appoint a committee of its members to inspect or investigate any county office or county public building or any public authority of the county or the office of any county officer, any court or court official of the county, the county

board of education, or the county school superintendent or any of the records, accounts, property, or operations of any of the foregoing.

(3) The grand jury may prepare reports or issue presentments based upon its inspections as provided for in this subsection, and any such presentments shall be subject to publication as provided for in Code Section 15-12-80.

(4) The grand jury may appoint one citizen of the county to provide technical expertise to the grand jury in connection with inspections provided for in this Code section. Such citizen shall be compensated at the same rate that a grand juror is compensated.

(c) Any grand jury or any committee thereof which has undertaken to conduct an inspection or investigation as provided in subsection (b) of this Code section shall have the right to examine any papers, books, records, and accounts, to compel the attendance of witnesses, and to hear evidence. If any public officer, agent, or employee refuses to produce any such papers, books, records, and accounts, any superior court judge of the superior court of the county, upon evidence being adduced, may enforce this Code section by mandamus or attachment as the case may require. If any public officer, agent, or employee fails or refuses to exhibit to the grand jury or its committee the funds on hand or claimed by them to be on hand upon presentation of that fact to any superior court judge of the superior court the judge may by mandamus or attachment compel the delivery of the funds to the grand jury or the committee for the purpose of counting.

(d) The judge charging the grand jury shall inform the grand jury of the provisions of subsections (b) and (c) of this Code section.

O.C.G.A. § 15-12-74.

Grand jurors have a duty to examine or make presentments of such offenses as may or shall come to their knowledge or observation after they have been sworn. Additionally, they have the right and power and it is their duty as jurors to make presentments of any violations of the laws which they may know to have been committed at any previous time which are not barred by the statute of limitations.

O.C.G.A. § 15-12-80.

Grand juries are authorized to recommend to the court the publication of the whole or any part of their general presentments and to prescribe the manner of publication. When the recommendation is made, the judge shall order the publication as recommended. Reasonable charges therefor shall be paid out of the county treasury, upon the certificate of the judge, as other court expenses are paid.

O.C.G.A. § 15-12-82.

(a) The judges of the superior courts are authorized and empowered to transfer the investigation by a grand jury from the county where the crime was committed to the grand jury in any other county in the state when it appears that a qualified grand jury cannot be had for the purpose of such investigation in the county where the crime was committed. The grand jury box shall be exhausted in trying to secure a qualified jury before a transfer of the investigation shall be made, unless the accused consents to a transfer.

(b) In order to secure a transfer under this Code section, the district attorney shall file a written motion asking for the transfer, stating the reason for transfer, and naming the day and hour when the motion is to be heard. He shall serve the accused with a copy of the motion at least one day before the hearing of the motion if the accused is in the custody of the officers of the court. In the event the accused is not in the custody of the officers of the court, service may be perfected in any manner reasonably calculated to give notice to the accused. In the event that the accused cannot be located, notice by publication may be used, as ordered by the court.

(c) The district attorney and the counsel for the accused may, by agreement, determine the county to which the transfer of the investigation shall be made, but in the event they do not agree it shall be the duty of the presiding judge to name the county to which the transfer shall be made.

(d) The sheriff and the clerk of the superior court of the county in which the crime was committed shall be qualified and authorized to perform the duties of such officers in the same manner as if there had been no change of venue. Any order or summons issued in connection with the investigation or trial shall be as binding as if no change of venue had been made.

(e) The expenses of the investigation and trial shall be paid by the county in which the crime was committed, and no greater amount shall be paid as per diem or for mileage than would have been paid in the event the investigation and trial had been in the county where the crime was committed. However, no change of venue shall be had for

the trial of the accused except as provided by law, unless by consent of the accused.

O.C.G.A. § 15-12-100.

(a) The chief judge of the superior court of any county to which this part applies, on his own motion or on petition of any elected public official of the county or of a municipality lying wholly or partially within the county, may request the judges of the superior court of the county to impanel a special grand jury for the purpose of investigating any alleged violation of the laws of this state or any other matter subject to investigation by grand juries as provided by law.

(b) The chief judge of the superior court of the county shall submit the question of impaneling a special grand jury to the judges of the superior court of the county and, if a majority of the total number of the judges vote in favor of impaneling a special grand jury, the members of a special grand jury shall be drawn in the manner prescribed by Code Section 15-12-62. Any special grand jury shall consist of not less than 16 nor more than 23 persons. The foreman of any special grand jury shall be selected in the manner prescribed by Code Section 15-12-67.

(c) While conducting any investigation authorized by this part, investigative grand juries may compel evidence and subpoena witnesses; may inspect records, documents, correspondence, and books of any department, agency, board, bureau, commission, institution, or authority of the state or any of its political subdivisions; and may require the production of records, documents, correspondence, and books of any person, firm, or corporation which relate directly or indirectly to the subject of the investigation being conducted by the investigative grand jury.

O.C.G.A. § 15-12-101.

(a) When a special grand jury is impaneled pursuant to Code Section 15-12-100, the chief judge of the superior court of the county shall assign a judge of the superior court of the county to supervise and assist the special grand jury in carrying out its investigation and duties. The judge so assigned shall charge the special grand jury as to its powers and duties and shall require periodic reports of the special grand jury's progress, as well as a final report.

(b) When the judge assigned to a special grand jury decides that the special grand jury's investigation has been completed or on the issuance of a report by the special grand jury of the matter investigated by it reporting that the investigation has been completed, the judge so assigned shall recommend to the chief judge of the superior court that the special grand jury be dissolved. The chief judge shall report the recommendation to the judges of the superior court of the county and, upon a majority thereof voting in favor of the dissolution of the special grand jury, the special grand jury shall stand dissolved. If a majority of the judges do not vote in favor of the dissolution of the special grand jury, the chief judge shall instruct and charge the special grand jury as to the particular matters to be investigated; and the special grand jury shall be required to investigate further and establish a period of time within which the investigation shall be completed. At the expiration of the period of time, the special grand jury shall be dissolved.

O.C.G.A. § 15-16-1.

(a) Intent. The General Assembly declares it to be in the best interests of the citizens of this state that

qualifications and standards for the office of sheriff be determined and set so as to improve both the capabilities and training of those persons who hold the office of sheriff. With the increase of crime continuing as a major social problem in this state and with the understanding that the sheriff is the basic law enforcement officer of the several counties of this state, it is declared to be the intent of the General Assembly that proper qualifications and standards be required of the person holding the office of sheriff so as to increase the effectiveness and capabilities of the several sheriffs of this state as law enforcement officers to combat crime.

(b) General requirements. Except as otherwise provided in this Code section, sheriffs are elected, qualified, commissioned, hold their offices for the same term, and are subject to the same disabilities as the clerks of the superior courts.

(c) Qualifications.

(1) No person shall be eligible to hold the office of sheriff unless such person:

(A) At the time of qualifying as a candidate for the office of sheriff is a citizen of the United States;

(B) Has been a resident of the county in which he or she seeks the office of sheriff for at least two years immediately preceding the date of qualifying for election to the office;

(C) At the time of qualifying as a candidate for the office of sheriff is a registered voter;

(D) At the time of qualifying as a candidate for the office of sheriff has attained the age of at least 25 years;

(E) At the time of qualifying as a candidate for the office of sheriff has obtained a high school diploma or its recognized equivalent in educational training as established by the Georgia Peace Officer Standards and Training Council;

(F) Has not been convicted of a felony offense or any offense involving moral turpitude contrary to the laws of this state, any other state, or the United States; provided, however, that a plea of nolo contendere to a felony offense or any offense involving moral turpitude contrary to the laws of this state shall have the same effect as a plea of guilty, thereby disqualifying such a person from holding the office of sheriff;

(G) Is fingerprinted and a search made of local, state, and national fingerprint files to disclose any criminal record, which fingerprints are to be taken under the direction of the judge of the probate court and must be taken on or before, but no later than, the close of qualification for election to the office of sheriff;

(H) At the time of qualifying as a candidate for the office of sheriff gives a complete written history of his or her places of residence for a period of six years immediately preceding his or her qualification date, giving the house number or RFD number, street, city, county, and state;

(I) At the time of qualifying as a candidate for the office of sheriff gives a complete written history of his or her places of employment for a period of six years immediately preceding his or her qualification date, giving the period of time employed and the name and address of his or her employer; and

(J) Is a registered peace officer as provided in Code Section 35-8-10 or is a certified peace officer as defined in

Chapter 8 of Title 35. Any person who is not a registered or certified peace officer at the time such person assumes the office of sheriff shall be required to complete satisfactorily the requirements for certification as a peace officer as provided in Chapter 8 of Title 35 within six months after such person takes office; provided, however, that an extension of the time to complete such requirements may be granted by the Georgia Peace Officer Standards and Training Council upon the presentation of evidence by a sheriff that he or she was unable to complete the basic training course and certification requirements due to illness, injury, military service, or other reasons deemed sufficient by such council. The Georgia Peace Officer Standards and Training Council shall make every effort to ensure that space is available for newly elected sheriffs who are not certified or registered peace officers to attend the course as soon as possible after such persons take office. Such council shall notify the appropriate judge of the probate court whenever a newly elected sheriff who is not certified fails to become certified as a peace officer pursuant to the requirements of this subparagraph.

(2) Each person offering his or her candidacy for the office of sheriff shall, within 60 days prior to or at the time such person qualifies:

(A) File with the officer before whom such person has qualified to seek the office of sheriff a certified copy of his or her birth certificate and a certified copy of his or her high school diploma or certified proof of its recognized equivalent in education training as established by the Georgia Peace Officer Standards and Training Council; and

(B) Swear or affirm before the officer before whom such person has qualified to seek the office of sheriff that he or she meets all of the qualifications required by this subsection, except as otherwise provided in subparagraph (J) of paragraph (1) of this subsection, and that he or she has complied with the requirements of subparagraph (G) of paragraph (1) of this subsection no later than the close of qualification for election to the office of sheriff.

(3) Each person offering to run for the office of sheriff and who is otherwise qualified shall be allowed, six months prior to qualifying and at his or her own expense, to attend the basic mandate course for peace officers. The Georgia Peace Officer Standards and Training Council shall work to ensure that space is available for such individuals to attend the course.

(d) Exemption. The requirements of subparagraphs (c)(1)(D), (c)(1)(E), (c)(1)(F), (c)(1)(H), (c)(1)(I), and (c)(1)(J) of this Code section shall be deemed to have been met by any person who is currently serving as a duly qualified and elected sheriff of one of the several counties of this state.

O.C.G.A. § 15-16-3.

(a) Intent. The General Assembly declares it to be the purpose of this Code section to promote the orderly transfer of the law enforcement power of the several counties of this state in connection with the expiration of the term of office of the sheriff and the taking of office of the newly elected sheriff. The interest of the State of Georgia requires that such transitions in the office of the sheriff be accomplished so as to assure continuity in the conduct of

the peace-keeping functions of the several counties of this state. Any disruption occasioned by the transfer of the law enforcement power to a person not properly versed and trained in law enforcement and the operations of the office of sheriff is declared to be detrimental to the safety and well-being of the citizens of the several counties of this state and of the entire state. Accordingly, it is the intent of the General Assembly that appropriate training be required of sheriffs who are newly elected so as to avoid or minimize any disruption in the performance of the duties and responsibilities or the authority of the sheriffs of the several counties of this state. This training shall be generally devoted to contemporary law enforcement, investigation, judicial process, and correction practices and specifically shall be germane to the duties and operational functions of the office of sheriff in the several counties of this state. Further, the purpose of this Code section is to promote professionalism within the office of sheriff by ensuring the highest possible quality of law enforcement training is offered to each sheriff on an annual basis. Accordingly, it is the intent of the General Assembly that appropriate ongoing training be required of all sheriffs. This training shall be generally devoted to contemporary law enforcement, investigation, judicial process, and corrections practices and specifically shall be germane to the duties and operational functions of the office of sheriff in the several counties of this state.

(b) Sheriffs-elect specialized training. Any person elected to the office of sheriff in a county of this state who was not serving as a duly elected or appointed sheriff on or before July 1, 1976, shall enroll in, attend, and successfully complete a course of sheriffs-elect specialized training and instruction established and provided by the Georgia

Sheriffs' Association with the assistance of the Georgia Public Safety Training Center. Such course of instruction shall be held every four years at a time to be designated by the Georgia Sheriffs' Association. Any newly elected sheriff who is unable to attend such training course when it is offered because of medical disability or providential cause shall, within one year from the date such disability or cause terminates, complete a course of instruction as determined by the Georgia Sheriffs' Association and approved by the Georgia Peace Officer Standards and Training Council. Any newly elected sheriff who does not fulfill the obligations of this subsection shall lose his or her power of arrest.

(c) Compensation. A newly elected sheriff who enrolls in and attends a course of training and instruction as described in subsection (b) of this Code section shall be paid compensation for his or her attendance on a weekly basis at the successful completion of each week's training. The compensation shall be paid by the Georgia Sheriffs' Association using funds appropriated by the state for such purpose or from federal funds available for such purpose. The compensation shall be in an amount equal to a proportionate part of the annual salary to be received by the new sheriff of the least populated county in this state for each week spent in attendance at the course of training and instruction. For the purposes of this Code section, five days of training and instruction shall be considered one week.

(d) Costs. The cost of training, housing, travel, and meals appropriate to the course of training and instruction shall be paid by the Georgia Sheriffs' Association from state funds appropriated for such purpose or from federal funds available for such purpose.

(e) Annual training.

(1) From and after July 1, 1997, no person shall be eligible to hold the office of sheriff unless he or she attends a minimum of 20 hours' training annually as may be selected by the Georgia Sheriffs' Association.

(2) The basis for the minimum annual requirement of in-service training shall be the calendar year. Sheriffs who satisfactorily complete the sheriffs-elect specialized training in accordance with the provisions of this Code section after April 1 in any calendar year shall be excused from the minimum annual training requirement for the calendar year during which the sheriffs-elect specialized training course is completed.

(3) A waiver of the requirement of minimum annual in-service training may be granted by the Georgia Peace Officer Standards and Training Council, in its discretion, upon the presentation of evidence by a sheriff that he or she was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the council.

(4) Any person who fails to complete the minimum annual in-service training required under this Code section and who has not received a waiver of such requirement pursuant to paragraph (3) of this subsection shall not perform any of the duties of sheriff involving the power of arrest until such training shall have been successfully completed. In addition, the Governor may suspend from office without pay for a period of 90 days any sheriff who fails to complete the minimum annual in-service training required under this Code section. The probate judge of the county of the sheriff's residence shall appoint a person who meets the qualifications for sheriff

pursuant to this Code section to assume the duties and responsibilities of the office of sheriff during any such period of suspension.

O.C.G.A. § 15-16-10 (a).

(a) It is the duty of the sheriff:

(1) To execute and return the processes and orders of the courts and of officers of competent authority, if not void, with due diligence, when delivered to him for that purpose, according to this Code;

(2) To attend, by himself or his deputy, upon all sessions of the superior court of the county and also upon sessions of the probate court whenever required by the judge thereof and, while the courts are in session, never to leave same without the presence of himself or his deputy, or both, if required;

(3) To attend, in the same manner specified in paragraph (2) of this subsection, at the place or places of holding an election at the county site, on the day of an election, from the opening to the closing of the polls, and to take under his charge all subordinate officers present, as police to preserve order;

(4) To publish sales, citations, and other proceedings as required by law and to keep a file of all newspapers in which his official advertisements appear, in the manner required of clerks of the superior courts;

(5) To keep an execution docket wherein he must enter a full description of all executions delivered to him and the dates of their delivery, together with all his actions thereon, and to have the same ready for use in any court of his county;

(6) To keep a book in which shall be entered a record of all sales made by process of court or by agreement of the parties under the sanction of the court, describing accurately the property and the process under which sold, the date of the levy and sale, the purchaser, and the price;

(7) To receive from the preceding sheriff all unexecuted writs and processes and proceed to execute the same; to carry into effect any levy or arrest made by a predecessor; to put purchasers into possession, and to make titles to purchasers at his or her predecessor's sales, when not done by his or her predecessor;

(8) To perform such other duties as are or may be imposed by law or which necessarily appertain to his or her office; and

(9) To exercise the same duties, powers, and arrest authority within municipalities which such officer exercises in the unincorporated areas of counties.

(b) If any sheriff or deputy fails to comply with any provision of subsection (a) of this Code section, he shall be fined for a contempt as the clerk of the superior court is fined in similar cases. Code Section 15-6-82, as to removal, shall also apply to sheriffs.

(c) In all counties of this state having a population of not less than 625,000 nor more than 725,000 according to the United States decennial census of 2000 or any future such census, it shall be the duty of the sheriffs of such counties to receive, confine, feed, and care for all persons charged with the violation of any ordinances of such counties in the same manner as persons charged with an indictable offense, whether such person charged with the violation of an ordinance is being held pending a hearing before the

recorder's courts of such counties or has been sentenced by the recorder's courts to imprisonment in the county jail.

(d) Nothing in this Code section shall restrict or otherwise prohibit a sheriff or a deputy sheriff or clerk acting under the authority of a sheriff from electing to store for computer retrieval any or all records, dockets, books, indices, or files; nor shall a sheriff or a deputy sheriff or clerk acting under the authority of a sheriff be prohibited from combining or consolidating any records, dockets, books, indices, or files in connection with the maintenance of any records of the kind specified or required in this Code section or any other law, provided that any automated or computerized record-keeping method or system shall provide for the systematic and safe preservation and retrieval of all such records, dockets, books, indices, or files. When the sheriff or a deputy sheriff or clerk acting under the authority of the sheriff elects to store for computer retrieval any or all records, the same data elements used in a manual system shall be used, and the same integrity and security maintained.

O.C.G.A. § 15-16-13.

(a) The sheriffs of the various counties of this state are authorized to contract with the governing body of any municipal corporation located within their respective counties, with the written consent of the governing authority of the county, for the purpose of providing law enforcement services to the municipal corporation. Such contracts may include undertakings by the sheriff to perform any police function, to exercise any police power, or to render any police service on behalf of the contracting municipal corporation. Upon the execution of any such contract and within the limitations contained in the contract, the

sheriff and his deputies may exercise the same powers as possessed by the contracting municipal corporation with respect to police services and all powers necessary or incidental thereto.

(b) Any contract authorized by this Code section shall not affect, impair, or limit the authority or powers of the municipal corporation or of the sheriff except as otherwise specified in the contract. Sheriffs shall have the same duties, powers, and arrest authority within municipalities which such officers have in unincorporated areas of counties. The duties, powers, and arrest authority of sheriffs shall not be limited, impaired, or affected in any way upon a sheriff and a municipality entering into a contract for the sheriff to provide additional duties or services to a municipality. Nothing in this Code section shall be construed so as to limit, affect, diminish, or impair the rights, powers, or duties of any county or municipal police department as set forth in Code Section 36-8-5 or any law creating or authorizing the creation of a municipal police department.

(c) Such contracts shall provide for the reimbursement of the county for the costs incurred by the sheriff in providing contract services, including, but not limited to, the compensation of deputy sheriffs and other personnel, the costs of funding retirement benefits, insurance, workers' compensation and other fringe benefits for deputies and personnel, the costs of training deputies and other personnel, and the costs of equipment, materials, supplies, and utilities to the extent that such equipment, materials, supplies, and utilities are not furnished by the contracting municipal corporation. Each contract shall provide for the ascertainment of the cost of providing contract services and shall be of such duration as may be agreed upon,

unless in conflict with any other general law or the Constitution of this state.

(d) All payments made by a municipal corporation under the terms of any contract authorized by this Code section shall be made to the general fund of the county. Any funds paid into the general fund of the county pursuant to such a contract shall be used for the purposes provided for in this Code section and in the contract and shall be paid by the governing authority of the county.

(e) Any other law to the contrary notwithstanding, the sheriff is authorized to employ such additional deputies and personnel as may be provided for in any contract authorized by this Code section and to purchase such automobiles, equipment, materials, supplies, and utilities as may be provided for in any such contract, the compensation, benefits, expenses, and costs of which shall be paid or funded by the governing authority of the county in an amount or amounts not exceeding the contract payments made by the municipal corporation into the general fund of the county.

(f) This Code section shall not apply to any county of 800,000 population or more according to the United States decennial census of 2000 or any future such census.

O.C.G.A. § 15-16-26.

(a) Whenever the Governor determines that an investigation of a sheriff of this state should be made as a result of criminal charges, alleged misconduct in office, or alleged incapacity of the sheriff to perform the functions of his office, he shall appoint two sheriffs who are members of the Georgia Sheriffs' Association who, along with the

Attorney General, shall constitute a committee to conduct an investigation. Such sheriffs may be from any two counties in the state other than the county of the sheriff under investigation. The members of any such committee shall receive no compensation for their services but shall be reimbursed for any expenses incurred in connection with an investigation. The funds necessary to conduct an investigation shall come from the funds appropriated to the executive branch of state government.

(b) Any member of the committee shall be authorized to administer oaths to any witness before the committee. The committee shall make a report of its investigation to the Governor within 30 days from the date of the appointment of both sheriff members by the Governor.

(c) If the committee recommends the suspension of the sheriff, the Governor shall be authorized to suspend the sheriff for a period of up to 60 days. In any case where a sheriff has been suspended for 60 days, the Governor may extend the period of suspension for an additional 30 days. Upon such recommendation, the Governor shall also be authorized to request the district attorney of the county of the sheriff's residence to bring a removal petition against the sheriff pursuant to subsection (b) of Code Section 15-16-10 and Code Section 15-6-82 based upon the evidence reported by the committee. In the event that the Governor determines that further investigation should be made, he may then order additional investigation by the committee, by the Georgia Bureau of Investigation, by other law enforcement agencies of this state, or by any special committee appointed by the Governor for such purpose.

(d) Except as provided in subsection (e) of this Code section, the chief judge of the superior court of the county

of the sheriff's residence shall appoint a person who meets the qualifications for sheriffs pursuant to Code Section 15-16-1 to assume the duties and responsibilities of the office of sheriff during any period of suspension.

(e) Upon indictment for a felony, the provisions of Code Section 45-5-6 shall apply.

(f) The remedy provided by this Code section is intended to be cumulative of other remedies available on the subject and is not intended to repeal such remedies.

O.C.G.A. § 15-16-27.

(a) Unless transferred to the appropriate clerk of court, the sheriff shall deposit cash bonds held by the sheriff in one or more interest-bearing trust accounts in investments authorized by Code Section 36-80-3 or by Chapter 83 of Title 36.

(b) The financial institution in which the funds are deposited shall remit, after service charges or fees are deducted, the interest generated by such funds directly, at least quarterly and within 30 days of receipt, to the Georgia Indigent Defense Council for distribution to the counties pursuant to Article 2 of Chapter 12 of Title 17. With each remittance the financial institution shall send a statement showing the name of the county, deposits and withdrawals from the account or accounts, interest paid, service charges or fees of the bank or other depository, and the net remittance. The Georgia Indigent Defense Council shall allocate all interest received from such funds deposited in interest-bearing trust accounts to the counties pursuant to Article 2 of Chapter 12 of Title 17.

(c) In counties where the service charges or fees of the bank or depository would exceed the interest received from

funds subject to this Code section, the sheriff shall be exempt from subsections (a) and (b) of this Code section. In such counties, the sheriff shall send a written notice to the Georgia Indigent Defense Council.

O.C.G.A. § 16-10-24.

(a) Except as otherwise provided in subsection (b) of this Code section, a person who knowingly and willfully obstructs or hinders any law enforcement officer in the lawful discharge of his official duties is guilty of a misdemeanor.

(b) Whoever knowingly and willfully resists, obstructs, or opposes any law enforcement officer, prison guard, correctional officer, probation supervisor, parole supervisor, or conservation ranger in the lawful discharge of his official duties by offering or doing violence to the person of such officer or legally authorized person is guilty of a felony and shall, upon conviction thereof, be punished by imprisonment for not less than one nor more than five years.

O.C.G.A. § 17-6-15.

(a) After arrest, if bail is tendered and accepted, no regular commitment need be entered, but a simple memorandum of the fact of bail being taken shall be sufficient.

(b)(1) A reasonable opportunity shall be allowed the accused person to give bail; and, even after commitment and imprisonment, the committing court may order the accused person brought before it to receive bail. No person shall be imprisoned under a felony commitment when bail has been fixed, if the person tenders and offers to give bond in the amount fixed, with sureties acceptable to the sheriff of the county in which the alleged offense occurred; provided, however, the sheriff shall publish and make

available written rules and regulations defining acceptable sureties and prescribing under what conditions sureties may be accepted. If the sheriff determines that a professional bonding company is an acceptable surety, the rules and regulations shall require, but shall not be limited to, the following:

(A) Complete documentation showing the composition of the company to be an individual, a trust, or a group of individuals, whether or not formed as a partnership or other legal entity, or a corporation or a combination of individuals, trusts, and corporations;

(B) Complete documentation for all employees, agents, or individuals authorized to sign or act on behalf of the bonding company;

(C) Complete documentation showing that the company holds a valid business license in the jurisdiction where bonds will be written;

(D) Fingerprints and background checks of every individual who acts as a professional bondsperson as defined in Code Section 17-6-50 for the professional bonding company seeking approval;

(E) Establishment of a cash escrow account or other form of collateral in a sum and upon terms and conditions approved by the sheriff;

(F) Establishment of application, approval, and reporting procedures for the professional bonding company deemed appropriate by the sheriff which satisfy all rules and regulations required by the laws of this state and the rules and regulations established by the sheriff;

(G) Applicable fees to be paid by the applicant to cover the cost of copying the rules and regulations and processing and investigating all applications and all other costs relating thereto; or

(H) Additional criteria and requirements for approving and regulating bonding companies to be determined at the discretion of the sheriff.

(2) This Code section shall not be construed to require a sheriff to accept a professional bonding company or bondsperson as a surety.

(3) This Code section shall not be construed to prevent the posting of real property bonds and the sheriff may not prohibit the posting of property bonds. Additional requirements for the use of real property may be determined at the discretion of the sheriff. The sheriff shall not prohibit a nonresident of the county from posting a real property bond if such real property is located in the county in which it is offered as bond and if such property has sufficient unencumbered equity to satisfy the sheriff's posted rules and regulations as to acceptable sureties.

(c) This Code section shall not abrogate or repeal the common-law authority of the judge having jurisdiction.

O.C.G.A. § 17-6-50.

(a) Bondsmen or persons who hold themselves out as signers or sureties of bonds for compensation are declared to be professional bondsmen.

(b) A professional bondsperson is one who holds himself or herself out as a signer or surety of bonds for compensation who must meet the following qualifications:

(1) Is 18 years of age or over;

(2) Is a resident of the State of Georgia for at least one year before making application to write bonds;

(3) Is a person of good moral character and has not been convicted of a felony or any crime involving moral turpitude; and

(4) Is approved by the sheriff and remains in good standing with respect to all applicable federal, state, and local laws and all rules and regulations established by the sheriff in the county where the bonding business is conducted.

(c) The sheriff of the county in which the bonding business is conducting business or is seeking approval to conduct business shall initiate a criminal background investigation to ensure that a professional bondsman has not been convicted of a felony or a crime involving moral turpitude in this state or any other jurisdiction. The sheriff shall require the professional bondsman to furnish two full sets of fingerprints which the sheriff shall submit to the Georgia Crime Information Center. The center shall submit a full set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

O.C.G.A. § 17-7-26.

In the event of a commitment of the accused person, the court, in its discretion, may require the witnesses, on behalf of the state or others, to give suitable bonds to secure their appearance at court, with or without sureties, as the circumstances seem to demand.

O.C.G.A. § 17-7-27.

The sheriffs and constables shall accept bond in such reasonable amount as may be just and fair to secure the appearance of any witness to attend the courts, provided the sureties tendered and offered on the bond are approved by a sheriff of any county.

O.C.G.A. § 17-10-1.

(a)(1) Except in cases in which life imprisonment, life without parole, or the death penalty may be imposed, upon a verdict or plea of guilty in any case involving a misdemeanor or felony, and after a presentence hearing, the judge fixing the sentence shall prescribe a determinate sentence for a specific number of months or years which shall be in conformity with any mandatory minimum sentences required by law or shall be within the minimum and maximum prescribed by law as the punishment for the crime. The judge imposing the sentence is granted power and authority to suspend or probate all or any part of the entire sentence under such rules and regulations as the judge deems proper, including the authority to revoke the suspension or probation when the defendant has violated any of the rules and regulations prescribed by the court, even before the probationary period has begun, subject to the conditions set out in this subsection; provided, however, that such action shall be subject to the provisions of Code Section 17-10-6.1.

(2) Probation supervision shall terminate in all cases no later than two years from the commencement of probation supervision unless specially extended or reinstated by the sentencing court upon notice and hearing and for good cause shown; provided, however, in those cases involving the collection of fines, restitution, or other funds, the

period of supervision shall remain in effect for so long as any such obligation is outstanding, or until termination of the sentence, whichever first occurs. Probation supervision shall not be required for defendants sentenced to probation while the defendant is in the legal custody of the Department of Corrections or the State Board of Pardons and Paroles.

(3)(A) Any part of a sentence of probation revoked for a violation other than a subsequent commission of any felony, a violation of a special condition, or a misdemeanor offense involving physical violence resulting in bodily injury to an innocent victim which in the opinion of the trial court constitutes a danger to the community or a serious infraction occurring while the defendant is assigned to an alternative probation confinement facility shall be served in a probation detention center, probation boot camp, diversion center, weekend lock up, or confinement in a local jail or detention facility, or other community correctional alternatives available to the court or provided by the Department of Corrections.

(B) A parolee or probationer charged with a misdemeanor involving physical injury or an attempt to commit physical injury or terroristic threats or with a new felony shall not be entitled to bond pending a hearing on the revocation of his or her parole or probation, except by order of a judge of the superior, state, or magistrate court wherein the alleged new offense occurred after a hearing and upon determination of the superior, state, or magistrate court that the parolee or probationer does not constitute a threat to the community; provided, however, that this subparagraph does not authorize state or magistrate court judges to grant bail for a person charged with any offense listed in subsection (a) of Code Section 17-6-1.

(4) In cases of imprisonment followed by probation, the sentence shall specifically provide that the period of probation shall not begin until the defendant has completed service of the confinement portion of the sentence. No revocation of any part of a probated sentence shall be effective while a defendant is in the legal custody of the Board of Pardons and Paroles.

(5)(A) Where a defendant has been sentenced to probation, the court shall retain jurisdiction throughout the period of the probated sentence as provided for in subsection (g) of Code Section 42-8-34. Without limiting the generality of the foregoing, the court may shorten the period of probation on motion of the defendant or on its own motion, if the court determines that probation is no longer necessary or appropriate for the ends of justice, the protection of society, and the rehabilitation of the defendant. Prior to entering any order for shortening a period of probation, the court shall afford notice to the victim or victims of all sex related offenses or violent offenses resulting in serious bodily injury or death, and, upon request of the victim or victims so notified, shall afford notice and an opportunity for hearing to the defendant and the prosecuting attorney.

(B) The Department of Corrections shall establish a form document which shall include the elements set forth in this Code section concerning notification of victims and shall make copies of such form available to prosecuting attorneys in the state. When requested by the victim, the form document shall be provided to the victim by the prosecuting attorney. The form shall include the address of the probation office having jurisdiction over the case and contain a statement that the victim must maintain a copy of his or her address with the probation office and must

notify the office of any change of address in order to maintain eligibility for notification by the Department of Corrections as required in this Code section.

(6)(A) Except as otherwise authorized by law, no court shall modify, suspend, probate, or alter a previously imposed sentence so as to reduce or eliminate a period of incarceration or probation and impose a financial payment which:

(i) Exceeds the statutorily specified maximum fine, plus all penalties, fees, surcharges, and restitution permitted or authorized by law; or

(ii) Is to be made to an entity which is not authorized by law to receive fines, penalties, fees, surcharges, or restitution.

(B) The prohibitions contained in this paragraph shall apply regardless of whether a defendant consents to the modification, suspension, probation, or alteration of such defendant's sentence and the imposition of such payment.

(C) Nothing in this paragraph shall prohibit or prevent a court from requiring, as a condition of suspension, modification, or probation of a sentence in a criminal case involving child abandonment, that the defendant pay all or a portion of child support which is owed to the custodial parent of a child which is the subject of such case.

(b) The judge, in fixing the sentence as prescribed in subsection (a) of this Code section, may make a determination as to whether the person being sentenced should be considered for parole prior to the completion of any requirement otherwise imposed by law relating to the completion of service of any specified time period before

parole eligibility. In the event that the judge so determines, he may specify in the sentence that the person is sentenced under this subsection and may provide that the State Board of Pardons and Paroles, acting in its sole discretion, may consider and may parole any person so sentenced at any time prior to the completion of any minimum requirement otherwise imposed by law, rule, or regulation for the service of sentences or portions thereof. The determination allowed in this subsection shall be applicable to first offenders only.

(c) In any case in which a minor defendant who has not achieved a high school diploma or the equivalent is placed under a probated or suspended sentence, the court may require as a condition of probation or suspension of sentence that the defendant pursue a course of study designed to lead to achieving a high school diploma or the equivalent; and, in any case in which such a condition of probation may be imposed, the court shall give express consideration to whether such a condition should be imposed.

(d) In any case involving a misdemeanor or a felony in which the defendant has been punished in whole or in part by a fine, the sentencing judge shall be authorized to allow the defendant to satisfy such fine through community service as defined in paragraph (2) of Code Section 42-8-70. One hour of community service shall equal the dollar amount of one hour of paid labor at the minimum wage under the federal Fair Labor Standards Act of 1938, as now or hereafter amended, unless otherwise specified by the sentencing judge. A defendant shall be required to serve the number of hours in community service which equals the number derived by dividing the amount of the fine by the federal minimum hourly wage or by the

amount specified by the sentencing judge. Prior to or subsequent to sentencing, a defendant may request the court that all or any portion of a fine may be satisfied under this subsection.

(e) In any case involving a felony in which the defendant previously appeared before a juvenile court, the records of the dispositions of the defendant as well as any evidence used in any juvenile court hearing shall be available to the district attorney, the defendant, and the superior court judge in determining sentencing as provided in Code Section 15-11-79.1.

(f) Within one year of the date upon which the sentence is imposed, or within 120 days after receipt by the sentencing court of the remittitur upon affirmance of the judgment after direct appeal, whichever is later, the court imposing the sentence has the jurisdiction, power, and authority to correct or reduce the sentence and to suspend or probate all or any part of the sentence imposed. Prior to entering any order correcting, reducing, or modifying any sentence, the court shall afford notice and an opportunity for a hearing to the prosecuting attorney. Any order modifying a sentence which is entered without notice and an opportunity for a hearing as provided in this subsection shall be void. This subsection shall not limit any other jurisdiction granted to the court in this Code section or as provided for in subsection (g) of Code Section 42-8-34.

O.C.G.A. § 17-10-3.

(a) Except as otherwise provided by law, every crime declared to be a misdemeanor shall be punished as follows:

(1) By a fine not to exceed $1,000.00 or by confinement in the county or other jail, county correctional institution, or

such other places as counties may provide for maintenance of county inmates, for a total term not to exceed 12 months, or both;

(2) By confinement under the jurisdiction of the Board of Corrections in a state probation detention center or diversion center pursuant to Code Sections 42-8-35.4 and 42-8-35.5, for a determinate term of months which shall not exceed a total term of 12 months; or

(3) If the crime was committed by an inmate within the confines of a state correctional institution, by confinement under the jurisdiction of the Board of Corrections in a state correctional institution or such other institution as the Department of Corrections may direct for a term which shall not exceed 12 months.

(b) Either the punishment provided in paragraph (1) or (2) of subsection (a) of this Code section, but not both, may be imposed in the discretion of the sentencing judge. Misdemeanor punishment imposed under either paragraph may be subject to suspension or probation. The sentencing courts shall retain jurisdiction to amend, modify, alter, suspend, or probate sentences under paragraph (1) of subsection (a) of this Code section at any time, but in no instance shall any sentence under the paragraph be modified in a manner to place a county inmate under the jurisdiction of the Board of Corrections, except as provided in paragraph (2) of subsection (a) of this Code section.

(c) In all misdemeanor cases in which, upon conviction, a six-month sentence or less is imposed, it is within the authority and discretion of the sentencing judge to allow the sentence to be served on weekends by weekend

confinement or during the nonworking hours of the defendant. A weekend shall commence and shall end in the discretion of the sentencing judge, and the nonworking hours of the defendant shall be determined in the discretion of the sentencing judge; provided, however, that the judge shall retain plenary control of the defendant at all times during the sentence period. A weekend term shall be counted as serving two days of the full sentence. Confinement during the nonworking hours of a defendant during any day may be counted as serving a full day of the sentence.

(d) In addition to or instead of any other penalty provided for the punishment of a misdemeanor involving a traffic offense, or punishment of a municipal ordinance involving a traffic offense, with the exception of habitual offenders sentenced under Code Section 17-10-7, a judge may impose any one or more of the following sentences:

(1) Reexamination by the Department of Motor Vehicle Safety when the judge has good cause to believe that the convicted licensed driver is incompetent or otherwise not qualified to be licensed;

(2) Attendance at, and satisfactory completion of, a driver improvement course meeting standards approved by the court;

(3) Within the limits of the authority of the charter powers of a municipality or the punishment prescribed by law in other courts, imprisonment at times specified by the court or release from imprisonment upon such conditions and at such times as may be specified; or

(4) Probation or suspension of all or any part of a penalty upon such terms and conditions as may be prescribed by

the judge. The conditions may include driving with no further motor vehicle violations during a specified time unless the driving privileges have been or will be otherwise suspended or revoked by law; reporting periodically to the court or a specified agency; and performing, or refraining from performing, such acts as may be ordered by the judge.

(e) Any sentence imposed under subsection (d) of this Code section shall be reported to the Department of Motor Vehicle Safety as prescribed by law.

(f) The Department of Corrections shall lack jurisdiction to supervise misdemeanor offenders, except when the sentence is made concurrent to a probated felony sentence or when the sentence is accepted pursuant to Code Section 42-9-71. Except as provided in this subsection, the Department of Corrections shall lack jurisdiction to confine misdemeanor offenders.

(g) This Code section will have no effect upon any offender convicted of a misdemeanor offense prior to January 1, 2001, and sentenced to confinement under the jurisdiction of the Board of Corrections or to the supervision of the Department of Corrections.

O.C.G.A. § 35-2-30.

There is created and established a division of the Department of Public Safety to be known as the Uniform Division, the members of which shall be known and designated as the 'Georgia State Patrol.'

O.C.G.A. § 35-3-3.

The Georgia Bureau of Investigation shall be composed of the Investigations Division, the Forensic Sciences

Division, the Georgia Crime Information Center Division, and such other divisions as may be created by the board.

O.C.G.A. § 35-8-2.

As used in this chapter, the term:

(1) 'Applicant' means a prospective peace officer who has not commenced employment or service with a law enforcement unit.

(2) 'Candidate' means a peace officer who, having satisfied preemployment requirements, has commenced employment with a law enforcement unit but who has not satisfied the training requirement provided for in this chapter.

(3) 'Council' means the Georgia Peace Officer Standards and Training Council.

(4) 'Department head' means the chief executive or head of a state department or agency, a county, a municipality, or a railroad who is a peace officer and whose responsibilities include the supervision and assignment of one or more employees or the performance of administrative and managerial duties of a police agency or law enforcement unit. Such term does not include the Attorney General, the director of the Georgia Drugs and Narcotics Agency, a district attorney, a solicitor general, a county or municipal fire chief, or peace officers employed exclusively as investigators of any such offices who do not exercise any law enforcement supervisory or managerial duties. The provisions of this paragraph shall not apply to any sheriff or to any head of any law enforcement unit within the office of sheriff.

(4.1) 'Detention facility' means a municipal or county jail used for the detention of persons charged with or convicted of a felony, a misdemeanor, or a municipal or county ordinance, but shall not include a facility customarily used to hold one or more persons for a period not to exceed eight hours while any such person awaits processing, booking, court appearance, or release.

(5) 'Emergency peace officers' means any peace officers who are employed or appointed to act as peace officers during an emergency or disaster which has been so declared by the chief executive officer of the state and whose status as peace officers is intended to be temporary and for that limited purpose.

(5.1) 'Jail officer' means any person who is employed or appointed by a county or a municipality and who has the responsibility of supervising inmates who are confined in a municipal or county detention facility.

(5.2) 'Juvenile correctional facility' means a facility operated by the Department of Juvenile Justice and used for the detention of youth who are delinquent or who are alleged to be delinquent or a facility operated by the Department of Juvenile Justice used for the care, treatment, and rehabilitation of juvenile offenders.

(5.3) 'Juvenile correctional officer' means any person employed or appointed by the Department of Juvenile Justice who has the primary responsibility for the supervision and control of youth confined in its programs and facilities.

(6) 'Law enforcement support personnel' means persons, other than peace officers, whose primary employment with a law enforcement unit consists of performing functions

directly related to the prevention, detection, or investigation of crime.

(7) 'Law enforcement unit' means:

(A) Any agency, organ, or department of this state, a subdivision or municipality thereof, or a railroad whose primary functions include the enforcement of criminal or traffic laws, the preservation of public order, the protection of life and property, or the prevention, detection, or investigation of crime;

(B) The Office of Permits and Enforcement of the Department of Transportation, the Department of Juvenile Justice and its institutions and facilities for the purpose of personnel who are authorized to exercise the power of arrest and who are employed or appointed by said department or institutions, and the office or section in the Department of Juvenile Justice in which persons are assigned who have been designated by the commissioner to investigate and apprehend unruly and delinquent children; and

(C) The Department of Corrections, the State Board of Pardons and Paroles, municipal correctional institutions employing 300 or more correctional officers, and county correctional institutions for the purpose of personnel who are authorized to exercise the power of arrest and who are employed or appointed by said department, board, or institutions.

(8) 'Peace officer' means, for purposes of this chapter only:

(A) An agent, operative, or officer of this state, a subdivision or municipality thereof, or a railroad who, as an employee for hire or as a volunteer, is vested either

expressly by law or by virtue of public employment or service with authority to enforce the criminal or traffic laws through the power of arrest and whose duties include the preservation of public order, the protection of life and property, and the prevention, detection, or investigation of crime;

(B) An enforcement officer who is employed by the Department of Transportation in its Office of Permits and Enforcement and any person employed by the Department of Juvenile Justice who is designated by the commissioner to investigate and apprehend unruly and delinquent children;

(B.1) Personnel who are authorized to exercise the power of arrest, who are employed or appointed by the Department of Juvenile Justice, and whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent and unruly children in the department's institutions, facilities, or programs;

(C) Personnel who are authorized to exercise the power of arrest and who are employed or appointed by the Department of Corrections, the State Board of Pardons and Paroles, municipal correctional institutions employing 300 or more correctional officers, county probation systems, and county correctional institutions; and

(D) An administrative investigator who is an agent, operative, investigator, or officer of this state whose duties include the prevention, detection, and investigation of violations of law and the enforcement of administrative, regulatory, licensing, or certification requirements of his or her respective employing agency.

Law enforcement support personnel are not peace officers within the meaning of this chapter, but they may be certified upon voluntarily complying with the certification provisions of this chapter.

(9) 'Retired peace officer' means a retired law enforcement officer who, prior to his or her retirement from service with the state or a subdivision or municipality thereof, was a peace officer within the meaning of such term as defined in paragraph (8) of this Code section. A retired peace officer may be certified or registered upon voluntarily complying with the certification or registration provisions of this chapter. Such term shall also mean a retired law enforcement officer who retired from service with the United States who meets all criteria as specified by the council for such classification; provided, however, that such classification shall not exempt such officer from satisfying the minimum employment and training requirements of this chapter if such officer is appointed or employed as a peace officer by the state or a subdivision or municipality thereof.

(10) 'school' means any school, college, university, academy, or training program approved by the council which offers basic law enforcement training and which consists of a combination of a course curriculum, instructors, and facilities.

(11) 'speed detection device' means that particular device designed to measure the speed or velocity of a motor vehicle and marketed under the name 'Vascar,' any device designed to measure the speed or velocity of motor vehicles using the Doppler principle of radio detection and ranging and commonly marketed under the name 'radar,' or any similar device, including but not limited to laser, operating

under the same or similar principle, which device is approved by the Department of Public Safety for the measurement of speed, including any device for the measurement of speed or velocity based upon the Doppler principle of radar or speed timing principle of laser.

O.C.G.A. § 36-1-4.

A county is not liable to suit for any cause of action unless made so by statute.

O.C.G.A. § 42-4-4.

(a) It shall be the duty of the sheriff:

(1) To take from the outgoing sheriff custody of the jail and the bodies of such persons as are confined therein, along with the warrant or cause of commitment;

(2) To furnish persons confined in the jail with medical aid, heat, and blankets, to be reimbursed if necessary from the county treasury, for neglect of which he shall be liable to suffer the penalty prescribed in this Code section; provided, however, that, with respect to an inmate covered under Article 3 of this chapter, the officer in charge will provide such person access to medical aid and may arrange for the person's health insurance carrier to pay the health care provider for the aid rendered; and

(3) To take all persons arrested or in execution under any criminal or civil process to the jail of an adjoining county, or to the jail of some other county if the latter is more accessible, if the jail of his county is in an unsafe condition, under such rules as are prescribed in this chapter.

(b) Subject to the provisions of this subsection and except as provided by law or as directed by a court of competent

jurisdiction, a sheriff shall not release a prisoner from his custody prior to the lawful completion of his sentence including any lawful credits under a trusty system. The provision shall not, however, preclude a sheriff from designating an inmate as a trusty and utilizing him in a lawful manner and, furthermore, this provision shall not preclude a sheriff from transferring a prisoner to another jail in another county if the sheriff concludes that such transfer is in the best interest of the prisoner or that such transfer is necessary for the orderly administration of the jail.

(c) Any sheriff or deputy who fails to comply with this Code section shall be fined for contempt, as is the clerk of the superior court in similar cases. The sheriff or deputy shall also be subject to removal from office as prescribed in Code Section 15-6-82.

O.C.G.A. § 42-4-7.

(a) The sheriff shall keep a record of all persons committed to the jail of the county of which he or she is sheriff. This record shall contain the name of the person committed, such person's age, sex, race, under what process such person was committed and from what court the process issued, the crime with which the person was charged, the date of such person's commitment to jail, the day of such person's discharge, under what order such person was discharged, and the court from which the order issued. This record shall be subject to examination by any person in accordance with the provisions of Article 4 of Chapter 18 of Title 50, relating to the inspection of public records.

(b)(1) The sheriff, chief jailer, warden, or other officer designated by the county as custodian of inmates confined as county inmates for probation violations of felony

offenses or as provided in subsection (a) of Code Section 17-10-3 may award earned time allowances to such inmates based on institutional behavior. Earned time allowances shall not be awarded which exceed one-half of the period of confinement imposed.

(2) While an inmate sentenced to confinement as a county inmate is in custody as a county inmate, the custodian of such inmate may award an earned time allowance consistent with this subsection and subsection (b) of Code Section 17-10-4 based on the institutional behavior of such inmate while in custody as a county inmate.

(3) An inmate sentenced to confinement as a county inmate shall be released at the expiration of his or her sentence less the time deducted for earned time allowances.

(c) Commencing January 1, 1984, those provisions of subsection (b) of this Code section which provide for good-time allowances to be awarded to inmates sentenced to confinement as county inmates as provided in subsection (a) of Code Section 17-10-3 shall apply to all such inmates in confinement on December 31, 1983, and all inmates who commit crimes on or after January 1, 1984, and are subsequently convicted and sentenced to confinement as county inmates. Conversion of the computation of the sentences of county inmates in confinement on December 31, 1983, from earned time governed sentences to good-time governed sentences shall be made by the sheriff or other custodian of such inmates. Commencing July 1, 1994, those provisions of subsection (b) of this Code section which provide for good-time allowances to be awarded to inmates sentenced to confinement as county inmates for

probation violations of felony offenses shall apply to all such inmates in confinement on June 30, 1994, and all inmates whose probation is revoked or who commit crimes on or after July 1, 1994, and are subsequently sentenced to confinement as county inmates. Commencing July 1, 2000, the award of earned time allowances pursuant to subsection (b) of this Code section for persons who commit crimes on or after July 1, 2000, and are subsequently convicted and sentenced to confinement as county inmates and inmates whose probation is revoked on or after July 1, 2000, or who commit crimes on or after July 1, 2000, and are subsequently sentenced to confinement as county inmates is not automatic or mandatory but shall be based upon institutional behavior.

O.C.G.A. § 42-4-31(a).

(a) It shall be unlawful for any person having charge of or responsibility for any detention facility to incarcerate any person in the detention facility unless a full-time jailer is on duty at the detention facility at all times while a person is incarcerated therein. For purposes of this Code section, a full-time dispatcher may also serve simultaneously as a full-time jailer in the case of:

(1) A municipal detention facility with 12 or fewer inmates incarcerated therein if such dispatcher either:

(A) Is equipped with mobile telephone and radio equipment which will allow such dispatcher to perform the duties of a dispatcher and the duties of a full-time jailer at the same time; or

(B) Is provided with temporary assistance or relief from the duties of a dispatcher while performing the duties of a jailer; or

(2) A municipal detention facility of a municipal corporation having a population of 6,000 or less if such dispatcher is certified both as a jailer and a dispatcher by the Georgia Peace Officer Standards and Training Council.

(b) If the local governing authority having jurisdiction over a detention facility has knowledge that the facility is operating without a full-time jailer on duty while persons are incarcerated therein, each member of the local governing authority having such knowledge and failing to attempt to correct the deficiency shall be in violation of this article.

(c) The officer in charge of a detention facility shall have the facility inspected semiannually by an officer from the state fire marshal's office or an officer selected by the Safety Fire Commissioner. Each detention facility shall be required to comply with this article with regard to fire safety and the applicable rules and regulations promulgated by the Safety Fire Commissioner. The inspecting officer shall fill out a form provided by the officer in charge and the form shall be posted in a conspicuous place by the officer in charge, thereby evidencing inspection of the facility.

(d) There shall be at least two separate keys for all locks at a detention facility, with one set in use and all duplicate keys safely stored under the control of a jailer or other administrative employee for emergency use. All security personnel must be familiar with the locking system of the detention facility and must be able immediately to release inmates in the event of a fire or other emergency. Regular locking and unlocking of door and fire escape locks shall be made to determine if they are in good working order. Any

damaged or nonfunctioning security equipment shall be promptly repaired.

O.C.G.A. § 42-5-50.

(a) The clerk of the court shall notify the commissioner of a sentence within 30 working days following the receipt of the sentence and send other documents set forth in this Code section. Such notice shall be mailed within such time period by first-class mail and shall be accompanied by two complete and certified sentence packages containing the following documents:

(1) A certified copy of the sentence;

(2) A complete history of the convicted person, including a certified copy of the indictment, accusation, or both and such other information as the commissioner may require;

(3) An affidavit of the custodian of such person indicating the total number of days the convicted person was incarcerated prior to the imposition of the sentence. It shall be the duty of the custodian of such person to transmit the affidavit provided for in this paragraph to the clerk of the superior court within ten days following the date on which the sentence is imposed; and

(4) Order of probation revocation or tolling of probation.

All of the aforementioned documents will be submitted on forms provided by the commissioner. The commissioner shall file one copy of each such document with the State Board of Pardons and Paroles within 30 working days of receipt of such documents from the clerk of the court. Except where the clerk is on a salary, the clerk shall receive from funds of the county the fee prescribed in Code Section 15-6-77 for such service.

(b) Except as otherwise provided in subsection (c) of this Code section, within 15 days after the receipt of the information provided for in subsection (a) of this Code section, the commissioner shall assign the convicted person to a correctional institution designated by him in accordance with subsection (b) of Code Section 42-5-51. It shall be the financial responsibility of the correctional institution to provide for the picking up and transportation, under guard, of the inmate to his assigned place of detention. If the inmate is assigned to a county correctional institution or other county facility, the county shall assume such duty and responsibility.

(c) In the event that the attorney for the convicted person shall file a written request with the court setting forth that the presence of the convicted person is required within the county of the conviction, or incarceration, in order to prepare and prosecute properly the appeal of the conviction, the convicted person shall not be transferred to the correctional institution as provided in subsection (b) of this Code section. In such event the convicted person shall remain in the custody of the local jail or lockup until all appeals of the conviction shall be disposed of or until the attorney of record for the convicted person shall file with the trial court an affidavit setting forth that the presence of the convicted person is no longer required within the county in which the conviction occurred, or in which the convicted person is incarcerated, whichever event shall first occur.

(d) The department shall not be required to assume the custody of those inmates who have been convicted and sentenced prior to January 1, 1983, and because their conviction is under appeal have not been transferred to the custody of the department, until July 1, 1983. The

state shall pay for each such inmate not transferred to the custody of the department the per diem rate specified by subsection (c) of Code Section 42-5-51 for each day the inmate remains in the custody of the county after the department receives the notice provided by subsection (a) of this Code section on or after January 1, 1983.

(e) In the event that the convicted person is free on bond pending the appeal of his conviction, the notice provided for in subsection (a) of this Code section shall not be transmitted to the commissioner until all appeals of such conviction have been disposed of or until the bond shall be revoked.

O.C.G.A. § 42-5-2.

(a) Except as provided in subsection (b) of this Code section, it shall be the responsibility of the governmental unit, subdivision, or agency having the physical custody of an inmate to maintain the inmate, furnishing him food, clothing, and any needed medical and hospital attention; to defend any habeas corpus or other proceedings instituted by or on behalf of the inmate; and to bear all expenses relative to any escape and recapture, including the expenses of extradition. Except as provided in subsection (b) of this Code section, it shall be the responsibility of the department to bear the costs of any reasonable and necessary emergency medical and hospital care which is provided to any inmate after the receipt by the department of the notice provided by subsection (a) of Code Section 42-5-50 who is in the physical custody of any other political subdivision or governmental agency of this state, except a county correctional institution, if the inmate is available and eligible for the transfer of his custody to the department pursuant to Code Section 42-5-50. Except as

provided in subsection (b) of this Code section, the department shall also bear the costs of any reasonable and necessary follow-up medical or hospital care rendered to any such inmate as a result of the initial emergency care and treatment of the inmate. With respect to state inmates housed in county correctional institutions, the department shall bear the costs of direct medical services required for emergency medical conditions posing an immediate threat to life or limb if the inmate cannot be placed in a state institution for the receipt of this care. The responsibility for payment will commence when the costs for direct medical services exceed an amount specified by rules and regulations of the Board of Corrections. The department will pay only the balance in excess of the specified amount. Except as provided in subsection (b) of this Code section, it shall remain the responsibility of the governmental unit having the physical custody of an inmate to bear the costs of such medical and hospital care, if the custody of the inmate has been transferred from the department pursuant to any order of any court within this state. The department shall have the authority to promulgate rules and regulations relative to payment of such medical and hospital costs by the department.

(b)(1) The officer in charge will provide an inmate access to medical services or hospital care and may arrange for the inmate's health insurance carrier to pay the health care provider for the services or care rendered as provided in Article 3 of Chapter 4 of this title.

(2) With respect to an inmate covered under Article 3 of Chapter 4 of this title, the costs of any medical services, emergency medical and hospital care, or follow-up medical or hospital care as provided in subsection (a) of this Code section for which a local governmental unit is responsible

shall mean the costs of such medical services and hospital care which have not been paid by the inmate's health insurance carrier or the Department of Community Health.

O.C.G.A. § 42-5-51.

(a) The department shall have no authority, jurisdiction, or responsibility with respect to misdemeanor offenders sentenced under paragraph (1) of subsection (a) of Code Section 17-10-3 to confinement in the county or other jail, county correctional institution, or such other places as counties may provide for maintenance of county inmates. The county wherein the sentence is imposed shall have the sole responsibility of executing the sentence and of providing for the care, maintenance, and upkeep of the inmate while serving such sentence; provided, however, that, where the sentencing judge certifies to the department that the county facilities of that county are inadequate for maintaining female inmates, any female inmate may be committed to the department to serve her sentence in a state correctional institution, as may be directed by the department; provided, further, that the delivery of the female inmates to the proper place of incarceration shall be at the expense of the county of conviction.

(b) Where any person is convicted of any offense, misdemeanor, or felony and sentenced to serve time in any penal institution in this state other than as provided in subsection (a) of this Code section, he shall be committed to the custody of the commissioner who, with the approval of the board, shall designate the place of confinement where the sentence shall be served.

(c) After proper documentation is received from the clerk of the court, the department shall have 15 days to transfer

an inmate under sentence to the place of confinement. If the inmate is not transferred within the 15 days, the department will reimburse the county, in a sum not less than $7.50 per day per inmate and in such an amount as may be appropriated for this purpose by the General Assembly, for the cost of the incarceration, commencing 15 days after proper documentation is received by the department from the clerk of the court. The reimbursement provisions of this Code section shall only apply to payment for the incarceration of felony inmates available for transfer to the department, except inmates under death sentence awaiting transfer after their initial trial, and shall not apply to inmates who were incarcerated under the custody of the commissioner at the time they were returned to the county jail for trial on additional charges or returned to the county jail for any other purposes, including for the purpose of a new trial.

(d) Notwithstanding any language in the sentence as passed by the court, the commissioner may designate as a place of confinement any available, suitable, and appropriate state or county correctional institution in this state operated under the jurisdiction or supervision of the department. The commissioner shall also have sole authority to transfer inmates from one state or county correctional institution in this state to any other such institution operated by or under the jurisdiction or supervision of or approved by the board. Neither male nor female state inmates shall be assigned to serve in any manner in a county jail unless they are participating in a state sponsored project and have the approval of the commissioner and the sheriff or the jail administrator of the county. Furthermore, the commissioner may transfer

to the Attorney General of the United States for confinement any inmate if it is determined that the custody, care, treatment, training, or rehabilitation of the inmate has not been adequate or in the best interest of the inmate or his fellow inmates. The commissioner is authorized to contract with the Attorney General of the United States for the custody, care, subsistence, housing, treatment, training, and rehabilitation of such inmates.

O.C.G.A. § 42-5-53.

(a) Subject to the provisions stated in this Code section, any county may purchase, rent, establish, construct, and maintain a county correctional institution for the care and detention of all inmates assigned to it by the department. The county may contract with other counties relative to the joint care, upkeep, and working of the inmates in such counties. Each county may pay its pro rata share of such expenses by taxes assessed and levied as provided by law.

(b) All county correctional institutions established by the counties as provided in subsection (a) of this Code section shall be subject to supervision and control by the department, and the board shall promulgate rules and regulations governing the administration and operation thereof.

(c)(1) Each county establishing a county correctional institution which complies with the rules and requirements established by the board and which is approved by the board shall receive a quota of inmates in accordance with such methods of apportionment as may be established by the board.

(2) The department is authorized, pursuant to rules and regulations adopted by the board, to pay funds, in an amount appropriated by the General Assembly for the

purposes specified in paragraph (1) of this subsection, for each state inmate assigned to a county correctional institution to the county operating the facility. The amount so paid shall be determined on the basis of an equal amount per day for each state inmate assigned to the county correctional institution.

(3) Each county is authorized to use the money paid to it pursuant to paragraph (2) of this subsection for the operation and maintenance of the county correctional institution or may use the money so paid to supplant county funds or previous levels of county funding for the county correctional institution. Following a full hearing, the board is given the authority to withhold payment or withdraw all inmates from any county correctional institution which does not at any time meet or comply with the rules, regulations, and requirements of the board or comply with its directions.

(d) In all cases in which an inmate is the sole responsibility of a county and the board has no authority, jurisdiction, or responsibility with respect to the sentence of the inmate, the county may confine the inmate in a county correctional institution established pursuant to this Code section. Counties without a county correctional institution may contract with counties having a county correctional institution to maintain the inmate.

(e) Nothing in this Code section shall be construed to prohibit the board from withdrawing inmates from any county correctional institution which does not at any time comply with the rules and regulations of the board promulgated pursuant to Code Section 42-5-10 or from withdrawing inmates from any county correctional institution which does not at any time meet the requirements of the

board or comply with its directives. For reasons other than the failure to comply with the rules, regulations, requirements, and directives, the board is authorized to withdraw all inmates under its jurisdiction from all county correctional institutions under the following conditions:

(1) That such withdrawal shall include all inmates under the jurisdiction of the board assigned to all county correctional institutions and that the withdrawal shall be completed within one year after the effective date of the beginning of the withdrawal;

(2) That all county correctional institutions shall be notified at least one year in advance of the effective date of the beginning of the withdrawal;

(3) That each county affected by the withdrawal shall have the option of selling or leasing its county correctional institution to the department, provided the State Institutions and Property Committee of the House of Representatives and the Corrections, Correctional Institutions and Property Committee of the Senate shall certify to the department that the facility is suitable for inmate housing and provided, further, that the sale price of the facility or the lease rental payments for the facility shall be determined by a board of three appraisers selected as follows:

(A) One to be selected by the department;

(B) One to be selected by the governing authority of the county; and

(C) The third to be selected by the other two appraisers;

(4) That each county affected by the withdrawal shall have 30 days from the date of the issuance of the notice required by paragraph (2) of this subsection to notify the

department that the facility is to be sold to the department, the facility is to be leased to the department, or the county will keep and maintain the facility for its own use. If the department is not so notified within the time limitation, the department shall be under no obligation to lease or purchase the facility;

(5) That if the county elects to sell or lease the facility, the committees named in paragraph (3) of this subsection shall have 60 days from the time the department is notified of such decision in which to inspect the facility and make its recommendations and certification to the department;

(6) That if any such facility is leased by the department, the term of the lease, the requirements relative to the repair, maintenance, and improvements of the facility by the county, and the requirements relative to the renewal of the lease shall be as agreed upon by the department and the governing authority of the county; and

(7) That the sales price or lease rental payments for each facility and the requirements relative to the lease contract when the facility is leased shall be determined within six months after the issuance of the notice of the effective date of the beginning of the withdrawal required by paragraph (2) of this subsection and that, if they are not determined within the time limitation, the department shall be under no obligation to lease or purchase the facility.

O.C.G.A. § 45-5-6.

(a) As used in this Code section, the term 'public official' means any elected county officer; any elected member of a county governing authority; any elected member of a city-county consolidated government; any member of a county,

area, or independent board of education; any school superintendent of a county, area, or independent school system; any solicitor-general of a state court; any elected member of any municipal governing authority; any member of the Public Service Commission; and any district attorney.

(b) Upon indictment for a felony by a grand jury of this state or by the United States, which felony indictment relates to the performance or activities of the office of any public official, the Attorney General or district attorney shall transmit a certified copy of the indictment to the Governor who shall, subject to subsection (e) of this Code section, appoint a review commission. Except as provided in this subsection, the commission shall be composed of the Attorney General and two public officials who hold the same office as the individual indicted. The members of the commission shall receive no compensation for their services but shall be reimbursed for any expenses incurred in connection with the investigation. The funds necessary to conduct the investigation shall come from funds appropriated to the executive branch of government. If the Attorney General brings the indictment against the public official, the Attorney General shall not serve on the commission. In place of the Attorney General, the Governor shall appoint a retired Supreme Court Justice or a retired Court of Appeals Judge.

(c) Unless a longer period of time is granted by the Governor, the commission shall make a written report to the Governor within 14 days. If the commission determines that the indictment relates to and adversely affects the administration of the office of the indicted public official and that the rights and interests of the public are

adversely affected thereby, the commission shall recommend that the public official be suspended from office. If, and only if, the commission recommends suspension, then the Governor shall review the findings and recommendations of the commission and may suspend the public officer from office immediately and without further action pending the final disposition of the case or until the expiration of his term of office, whichever occurs first. During the term of office to which such officer was elected and in which the indictment occurred, if a nolle prosequi is entered, if the public official is acquitted, or if after conviction the conviction is later overturned as a result of any direct appeal or application for a writ of certiorari, the public official shall be immediately reinstated to the office from which he was suspended. While a public official is suspended under this Code section and until initial conviction by the trial court, the public official shall continue to receive the compensation from his office. After initial conviction by the trial court, the public official shall not be entitled to receive the compensation from his office. If the public official is reinstated to office, he shall be entitled to receive any compensation withheld under the provisions of this Code section.

(d)(1) For the duration of any suspension of any elected member of any municipal or consolidated city-county governing authority under this Code section, a replacement officer for the public officer suspended shall be appointed as provided for in any general law, local law, ordinance, or resolution governing the filling of a temporary vacancy in the public office affected. For the duration of any suspension of any other public official under this Code section, a replacement officer for the public official shall be appointed as provided for in any applicable

general or local law governing the filling of a temporary vacancy in the public office affected. If no such general law, local law, ordinance, or resolution governing the filling of a temporary vacancy is applicable, then the Governor shall appoint a replacement officer for the public official suspended.

(2) Upon the final conviction, the office of the public official shall be vacated immediately without further action. Said vacancy shall be filled in the manner provided by law for filling vacancies in such office.

(e) No commission shall be appointed for a period of 14 days from the day the Governor receives the indictment. This period may be extended by the Governor. During this period of time, the indicted public official may, in writing, authorize the Governor to suspend him from office. Any such voluntary suspension shall be subject to the same conditions for review, reinstatement, or declaration of vacancy as are provided in this Code section for nonvoluntary suspensions.

(f) After any suspension under this Code section, the suspended public official may petition the Governor for a review. The Governor may reappoint the commission to review the suspension. The commission shall make a written report in 14 days. If the commission recommends that the public official be reinstated, he shall immediately be reinstated to office.

(g) The report and records of the commission and the fact that the public official has or has not been suspended shall not be admissible in evidence in any court for any purpose. The report and records of the commission shall not be open to the public.

(h) The provisions of this Code section shall not apply to any indictment handed down prior to January 1, 1985.

(i) If a public official who is suspended from office under the provisions of this Code section is not first tried at the next regular or special term following the indictment, the suspension shall be terminated and the public official shall be reinstated to office. The public official shall not be reinstated under this subsection if he is not so tried based on a continuance granted upon a motion made only by the defendant.

O.C.G.A. § 45-4-7.

All county officials who are required to give an official bond shall make bond signed by some surety or guaranty company authorized to do business in this state. The premiums due on all such bonds must be paid by the county fiscal authorities out of county funds, and it shall be mandatory upon the county fiscal authorities in every county in the state to pay the premiums due on all such bonds out of county funds. This Code section shall not apply to county school superintendents' bonds.

O.C.G.A. § 50-21-24.

The state shall have no liability for losses resulting from:

(1) An act or omission by a state officer or employee exercising due care in the execution of a statute, regulation, rule, or ordinance, whether or not such statute, regulation, rule, or ordinance is valid;

(2) The exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a state officer or employee, whether or not the discretion involved is abused;

(3) The assessment or collection of any tax or the detention of any goods or merchandise by any law enforcement officer;

(4) Legislative, judicial, quasi-judicial, or prosecutorial action or inaction;

(5) Administrative action or inaction of a legislative, quasi-legislative, judicial, or quasi-judicial nature;

(6) Civil disturbance, riot, insurrection, or rebellion or the failure to provide, or the method of providing, law enforcement, police, or fire protection;

(7) Assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, or interference with contractual rights;

(8) Inspection powers or functions, including failure to make an inspection or making an inadequate or negligent inspection of any property other than property owned by the state to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;

(9) Licensing powers or functions, including, but not limited to, the issuance, denial, suspension, or revocation of or the failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;

(10) The plan or design for construction of or improvement to highways, roads, streets, bridges, or other public works where such plan or design is prepared in substantial compliance with generally accepted engineering or design standards in effect at the time of preparation of the plan or design;

(11) Financing regulatory activities, including, but not limited to, examinations, inspections, audits, or other financial oversight activities;

(12) Activities of the Georgia National Guard when engaged in state or federal training or duty, but this exception does not apply to vehicular accidents; or

(13) Any failure or malfunction occurring before December 31, 2005, which is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times, if the failure or malfunction causing the loss was unforeseeable or if the failure or malfunction causing the loss was foreseeable but the plan or design or both for identifying and preventing the failure or malfunction was prepared in substantial compliance with generally accepted computer and information system design standards in effect at the time of the preparation of the plan or design.

O.C.G.A. § 15-7-4.

(a) Each state court shall have jurisdiction, within the territorial limits of the county or counties for which it was created and concurrent with the superior courts, over the following matters:

(1) The trial of criminal cases below the grade of felony;

(2) The trial of civil actions without regard to the amount in controversy, except those actions in which exclusive jurisdiction is vested in the superior courts;

(3) The hearing of applications for and the issuance of arrest and search warrants;

(4) The holding of courts of inquiry;

(5) The punishment of contempts by fine not exceeding $500.00 or by imprisonment not exceeding 20 days, or both; and

(6) Review of decisions of other courts as may be provided by law.

(b) Each state court shall have jurisdiction, within the territorial limits of the county or counties for which it was created and concurrent with other courts having such jurisdiction, over possession of one ounce or less of marijuana, in accordance with Code Sections 16-13-2 and 16-13-30.

O.C.G.A § 15-16-1.

(a) *Intent.* The General Assembly declares it to be in the best interests of the citizens of this state that qualifications and standards for the office of sheriff be determined and set so as to improve both the capabilities and training of those persons who hold the office of sheriff. With the increase of crime continuing as a major social problem in this state and with the understanding that the sheriff is the basic law enforcement officer of the several counties of this state, it is declared to be the intent of the General Assembly that proper qualifications and standards be

required of the person holding the office of sheriff so as to increase the effectiveness and capabilities of the several sheriffs of this state as law enforcement officers to combat crime.

(b) *General requirements.* Except as otherwise provided in this Code section, sheriffs are elected, qualified, commissioned, hold their offices for the same term, and are subject to the same disabilities as the clerks of the superior courts.

(c) *Qualifications.*

(1) No person shall be eligible to hold the office of sheriff unless such person:

(A) At the time of qualifying as a candidate for the office of sheriff is a citizen of the United States;

(B) Has been a resident of the county in which he or she seeks the office of sheriff for at least two years immediately preceding the date of qualifying for election to the office;

(C) At the time of qualifying as a candidate for the office of sheriff is a registered voter;

(D) At the time of qualifying as a candidate for the office of sheriff has attained the age of at least 25 years;

(E) At the time of qualifying as a candidate for the office of sheriff has obtained a high school diploma or its recognized equivalent in educational training as established by the Georgia Peace Officer Standards and Training Council;

(F) Has not been convicted of a felony offense or any offense involving moral turpitude contrary to the laws of this state, any other state, or the United States; provided,

however, that a plea of nolo contendere to a felony offense or any offense involving moral turpitude contrary to the laws of this state shall have the same effect as a plea of guilty, thereby disqualifying such a person from holding the office of sheriff;

(G) Is fingerprinted and a search made of local, state, and national fingerprint files to disclose any criminal record, which fingerprints are to be taken under the direction of the judge of the probate court and must be taken on or before, but no later than, the close of qualification for election to the office of sheriff;

(H) At the time of qualifying as a candidate for the office of sheriff gives a complete written history of his or her places of residence for a period of six years immediately preceding his or her qualification date, giving the house number or RFD number, street, city, county, and state;

(I) At the time of qualifying as a candidate for the office of sheriff gives a complete written history of his or her places of employment for a period of six years immediately preceding his or her qualification date, giving the period of time employed and the name and address of his or her employer; and

(J) Is a registered peace officer as provided in Code Section 35-8-10 or is a certified peace officer as defined in Chapter 8 of Title 35. Any person who is not a registered or certified peace officer at the time such person assumes the office of sheriff shall be required to complete satisfactorily the requirements for certification as a peace officer as provided in Chapter 8 of Title 35 within six months after such person takes office; provided, however, that an extension of the time to complete such requirements may be granted by the Georgia Peace Officer Standards and

Training Council upon the presentation of evidence by a sheriff that he or she was unable to complete the basic training course and certification requirements due to illness, injury, military service, or other reasons deemed sufficient by such council. The Georgia Peace Officer Standards and Training Council shall make every effort to ensure that space is available for newly elected sheriffs who are not certified or registered peace officers to attend the course as soon as possible after such persons take office. Such council shall notify the appropriate judge of the probate court whenever a newly elected sheriff who is not certified fails to become certified as a peace officer pursuant to the requirements of this subparagraph.

(2) Each person offering his or her candidacy for the office of sheriff shall, within 60 days prior to or at the time such person qualifies:

(A) File with the officer before whom such person has qualified to seek the office of sheriff a certified copy of his or her birth certificate and a certified copy of his or her high school diploma or certified proof of its recognized equivalent in education training as established by the Georgia Peace Officer Standards and Training Council; and

(B) Swear or affirm before the officer before whom such person has qualified to seek the office of sheriff that he or she meets all of the qualifications required by this subsection, except as otherwise provided in subparagraph (J) of paragraph (1) of this subsection, and that he or she has complied with the requirements of subparagraph (G) of paragraph (1) of this subsection no later than the close of qualification for election to the office of sheriff.

(3) Each person offering to run for the office of sheriff and who is otherwise qualified shall be allowed, six months prior to qualifying and at his or her own expense, to attend the basic mandate course for peace officers. The Georgia Peace Officer Standards and Training Council shall work to ensure that space is available for such individuals to attend the course.

(d) *Exemption.* The requirements of subparagraphs (c)(1)(D), (c)(1)(E), (c)(1)(F), (c)(1)(H), (c)(1)(I), and (c)(1)(J) of this Code section shall be deemed to have been met by any person who is currently serving as a duly qualified and elected sheriff of one of the several counties of this state.

O.C.G.A § 15-16-3.

(a) *Intent.* The General Assembly declares it to be the purpose of this Code section to promote the orderly transfer of the law enforcement power of the several counties of this state in connection with the expiration of the term of office of the sheriff and the taking of office of the newly elected sheriff. The interest of the State of Georgia requires that such transitions in the office of the sheriff be accomplished so as to assure continuity in the conduct of the peace-keeping functions of the several counties of this state. Any disruption occasioned by the transfer of the law enforcement power to a person not properly versed and trained in law enforcement and the operations of the office of sheriff is declared to be detrimental to the safety and well-being of the citizens of the several counties of this state and of the entire state. Accordingly, it is the intent of the General Assembly that appropriate training be required of sheriffs who are newly elected so as to avoid or minimize any disruption in the

performance of the duties and responsibilities or the authority of the sheriffs of the several counties of this state. This training shall be generally devoted to contemporary law enforcement, investigation, judicial process, and correction practices and specifically shall be germane to the duties and operational functions of the office of sheriff in the several counties of this state. Further, the purpose of this Code section is to promote professionalism within the office of sheriff by ensuring the highest possible quality of law enforcement training is offered to each sheriff on an annual basis. Accordingly, it is the intent of the General Assembly that appropriate ongoing training be required of all sheriffs. This training shall be generally devoted to contemporary law enforcement, investigation, judicial process, and corrections practices and specifically shall be germane to the duties and operational functions of the office of sheriff in the several counties of this state.

(b) *Sheriffs-elect specialized training.* Any person elected to the office of sheriff in a county of this state who was not serving as a duly elected or appointed sheriff on or before July 1, 1976, shall enroll in, attend, and successfully complete a course of sheriffs-elect specialized training and instruction established and provided by the Georgia Sheriffs' Association with the assistance of the Georgia Public Safety Training Center. Such course of instruction shall be held every four years at a time to be designated by the Georgia Sheriffs' Association. Any newly elected sheriff who is unable to attend such training course when it is offered because of medical disability or providential cause shall, within one year from the date such disability or cause terminates, complete a course of instruction as determined by the Georgia Sheriffs' Association and approved by the Georgia Peace Officer Standards and

Training Council. Any newly elected sheriff who does not fulfill the obligations of this subsection shall lose his or her power of arrest.

(c) *Compensation.* A newly elected sheriff who enrolls in and attends a course of training and instruction as described in subsection (b) of this Code section shall be paid compensation for his or her attendance on a weekly basis at the successful completion of each week's training. The compensation shall be paid by the Georgia Sheriffs' Association using funds appropriated by the state for such purpose or from federal funds available for such purpose. The compensation shall be in an amount equal to a proportionate part of the annual salary to be received by the new sheriff of the least populated county in this state for each week spent in attendance at the course of training and instruction. For the purposes of this Code section, five days of training and instruction shall be considered one week.

(d) *Costs.* The cost of training, housing, travel, and meals appropriate to the course of training and instruction shall be paid by the Georgia Sheriffs' Association from state funds appropriated for such purpose or from federal funds available for such purpose.

(e) *Annual training.*

(1) From and after July 1, 1997, no person shall be eligible to hold the office of sheriff unless he or she attends a minimum of 20 hours' training annually as may be selected by the Georgia Sheriffs' Association.

(2) The basis for the minimum annual requirement of in-service training shall be the calendar year. Sheriffs who

satisfactorily complete the sheriffs-elect specialized training in accordance with the provisions of this Code section after April 1 in any calendar year shall be excused from the minimum annual training requirement for the calendar year during which the sheriffs-elect specialized training course is completed.

(3) A waiver of the requirement of minimum annual in-service training may be granted by the Georgia Peace Officer Standards and Training Council, in its discretion, upon the presentation of evidence by a sheriff that he or she was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the council.

(4) Any person who fails to complete the minimum annual in-service training required under this Code section and who has not received a waiver of such requirement pursuant to paragraph (3) of this subsection shall not perform any of the duties of sheriff involving the power of arrest until such training shall have been successfully completed. In OFFICIAL CODE OF GEORGIA addition, the Governor may suspend from office without pay for a period of 90 days any sheriff who fails to complete the minimum annual in-service training required under this Code section. The probate judge of the county of the sheriff's residence shall appoint a person who meets the qualifications for sheriff pursuant to this Code section to assume the duties and responsibilities of the office of sheriff during any such period of suspension.

O.C.G.A. § 15-16-10.

(a) It is the duty of the sheriff:

(1) To execute and return the processes and orders of the courts and of officers of competent authority, if not void, with due diligence, when delivered to him for that purpose, according to this Code;

(2) To attend, by himself or his deputy, upon all sessions of the superior court of the county and also upon sessions of the probate court whenever required by the judge thereof and, while the courts are in session, never to leave same without the presence of himself or his deputy, or both, if required;

(3) To attend, in the same manner specified in paragraph (2) of this subsection, at the place or places of holding an election at the county site, on the day of an election, from the opening to the closing of the polls, and to take under his charge all subordinate officers present, as police to preserve order;

(4) To publish sales, citations, and other proceedings as required by law and to keep a file of all newspapers in which his official advertisements appear, in the manner required of clerks of the superior courts;

(5) To keep an execution docket wherein he must enter a full description of all executions delivered to him and the dates of their delivery, together with all his actions thereon, and to have the same ready for use in any court of his county;

(6) To keep a book in which shall be entered a record of all sales made by process of court or by agreement of the

parties under the sanction of the court, describing accurately the property and the process under which sold, the date of the levy and sale, the purchaser, and the price;

(7) To receive from the preceding sheriff all unexecuted writs and processes and proceed to execute the same; to carry into effect any levy or arrest made by a predecessor; to put purchasers into possession, and to make titles to purchasers at his or her predecessor's sales, when not done by his or her predecessor;

(8) To perform such other duties as are or may be imposed by law or which necessarily appertain to his or her office; and

(9) To exercise the same duties, powers, and arrest authority within municipalities which such officer exercises in the unincorporated areas of counties.

(b) If any sheriff or deputy fails to comply with any provision of subsection (a) of this Code section, he shall be fined for a contempt as the clerk of the superior court is fined in similar cases. Code Section 15-6-82, as to removal, shall also apply to sheriffs.

(c) In all counties of this state having a population of not less than 625,000 nor more than 725,000 according to the United States decennial census of 2000 or any future such census, it shall be the duty of the sheriffs of such counties to receive, confine, feed, and care for all persons charged with the violation of any ordinances of such counties in the same manner as persons charged with an indictable offense, whether such person charged with the violation of an ordinance is being held pending a hearing before the recorder's courts of such counties or has been sentenced by the recorder's courts to imprisonment in the county jail.

(d) Nothing in this Code section shall restrict or otherwise prohibit a sheriff or a deputy sheriff or clerk acting under the authority of a sheriff from electing to store for computer retrieval any or all records, dockets, books, indices, or files; nor shall a sheriff or a deputy sheriff or clerk acting under the authority of a sheriff be prohibited from combining or consolidating any records, dockets, books, indices, or files in connection with the maintenance of any records of the kind specified or required in this Code section or any other law, provided that any automated or computerized record-keeping method or system shall provide for the systematic and safe preservation and retrieval of all such records, dockets, books, indices, or files. When the sheriff or a deputy sheriff or clerk acting under the authority of the sheriff elects to store for computer retrieval any or all records, the same data elements used in a manual system shall be used, and the same integrity and security maintained.

O.C.G.A § 15-16-20.

(a)(1) Any other law to the contrary notwithstanding, the minimum annual salary of each sheriff in this state shall be fixed according to the population of the county in which he or she serves, as determined by the United States decennial census of 1990 or any future such census. Except as otherwise provided in paragraph (2) of this subsection, each such sheriff shall receive an annual salary, payable in equal monthly installments from the funds of the sheriff's county, of not less than the amount fixed in the following schedule:

Population	*Minimum Salary*
0 – 5,999	$37,256.02
6,000 – 11,889	41,573.04
11,890 – 19,999	47,742.11
20,000 – 28,999	52,570.10
29,000 – 38,999	57,396.87
39,000 – 49,999	62,227.28
50,000 – 74,999	67,054.03
75,000 – 99,999	69,333.30
100,000 – 149,999	71,612.57
150,000 – 199,999	74,161.29
200,000 – 249,999	76,710.00
250,000 – 299,999	83,964.09
300,000 – 399,999	93,766.90
400,000 – 499,999	97,407.90
500,000 – and up	101,048.91

(2) On and after July 1, 2001, whenever the employees in the classified service of the state merit system receive a cost-of-living increase or general performance based increase of a certain percentage or a certain amount, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection and in Code Section 15-16-20.1, or the amounts derived by increasing each of said amounts through the application of longevity increases pursuant to subsection (b) of this Code section, where applicable, shall be increased by the same percentage or same amount applicable to such state employees. If the cost-of-living increase or general performance based increase received by state employees is in different percentages or different amounts as to certain categories of employees, the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 15-16-20.1, or the amounts derived through the application of longevity increases, shall be increased by a

percentage or an amount not to exceed the average percentage or average amount of the general increase in salary granted to the state employees. The Office of Planning and Budget shall calculate the average percentage increase or average amount increase when necessary. The periodic changes in the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 15-16-20.1, or the amounts derived through the application of longevity increases, as authorized by this paragraph shall become effective on the first day of January following the date that the cost-of-living increases received by state employees become effective; provided, however, that if the cost-of-living increases or general performance based increases received by state employees become effective on January 1, such periodic changes in the amounts fixed in the minimum salary schedule in paragraph (1) of this subsection, and in Code Section 15-16-20.1, or the amounts derived through the application of longevity increases, as authorized by this paragraph shall become effective on the same date that the cost-of-living increases or general performance based increases received by state employees become effective.

(3) The county governing authority may supplement the minimum annual salary of the sheriff in such amount as it may fix from time to time; but no sheriff's compensation supplement shall be decreased during any term of office. Any prior expenditure of county funds to supplement the sheriff's salary in the manner authorized by this paragraph is ratified and confirmed. Nothing contained in this paragraph shall prohibit the General Assembly by local law from supplementing the annual salary of the sheriff.

(b) The amounts provided in paragraph (1) of subsection (a) of this Code section and Code Section 15-16-20.1, as

increased by paragraph (2) of subsection (a) of this Code section, shall be increased by multiplying said amounts by the percentage which equals 5 percent times the number of completed four-year terms of office served by any sheriff after December 31, 1976, effective the first day of January following the completion of each such period of service.

(c) The minimum salaries provided for in this Code section shall be considered as salary only. Expenses for deputies, equipment, supplies, copying equipment, and other necessary and reasonable expenses for the operation of a sheriff's office shall come from funds other than the funds specified as salary in this Code section.

(d) This Code section shall not be construed to reduce the salary of any sheriff in office on July 1, 1991; provided, however, that successors to such sheriffs in office on July 1, 1991, shall be governed by the provisions of this Code section. All local legislation in effect on July 1, 1971, or enacted thereafter affecting compensation for sheriffs of the various counties shall be of full force and effect except where the same provides for a salary lower than provided in this Code section, in which event this Code section shall prevail.

(e) In addition to any salary or fees now or hereafter provided by law, the governing authority of each county is authorized to provide, as an operating expense of the sheriff's office and payable from county funds, a monthly vehicle allowance to the sheriff of that county when the sheriff's personally owned vehicle is used in the carrying out of the duties of the sheriff's office. If a vehicle allowance is so provided, it shall be in an amount determined by agreement among the budget officer of the county, as

provided in Chapter 81 of Title 36, the county governing authority, and the sheriff.

O.C.G.A § 15-16-23.

Sheriffs are authorized in their discretion to appoint one or more deputies. Each deputy shall be required to execute a bond with a surety in the amount of $5,000.00 payable to the sheriff and conditioned upon the faithful accounting for all public and other funds or property coming into the deputy's custody, control, care, or possession.

O.C.G.A. § 15-16-26.

(a) Whenever the Governor determines that an investigation of a sheriff of this state should be made as a result of criminal charges, alleged misconduct in office, or alleged incapacity of the sheriff to perform the functions of his office, he shall appoint two sheriffs who are members of the Georgia Sheriffs' Association who, along with the Attorney General, shall constitute a committee to conduct an investigation. Such sheriffs may be from any two counties in the state other than the county of the sheriff under investigation. The members of any such committee shall receive no compensation for their services but shall be reimbursed for any expenses incurred in connection with an investigation. The funds necessary to conduct an investigation shall come from the funds appropriated to the executive branch of state government.

(b) Any member of the committee shall be authorized to administer oaths to any witness before the committee. The committee shall make a report of its investigation to the Governor within 30 days from the date of the appointment of both sheriff members by the Governor.

(c) If the committee recommends the suspension of the sheriff, the Governor shall be authorized to suspend the sheriff for a period of up to 60 days. In any case where a sheriff has been suspended for 60 days, the Governor may extend the period of suspension for an additional 30 days. Upon such recommendation, the Governor shall also be authorized to request the district attorney of the county of the sheriff's residence to bring a removal petition against the sheriff pursuant to subsection (b) of Code Section 15-16-10 and Code Section 15-6-82 based upon the evidence reported by the committee. In the event that the Governor determines that further investigation should be made, he may then order additional investigation by the committee, by the Georgia Bureau of Investigation, by other law enforcement agencies of this state, or by any special committee appointed by the Governor for such purpose.

(d) Except as provided in subsection (e) of this Code section, the chief judge of the superior court of the county of the sheriff's residence shall appoint a person who meets the qualifications for sheriffs pursuant to Code Section 15-16-1 to assume the duties and responsibilities of the office of sheriff during any period of suspension.

(e) Upon indictment for a felony, the provisions of Code Section 45-5-6 shall apply.

(f) The remedy provided by this Code section is intended to be cumulative of other remedies available on the subject and is not intended to repeal such remedies.

O.C.G.A. § 15-16-27.

(a) Unless transferred to the appropriate clerk of court, the sheriff shall deposit cash bonds held by the sheriff in one or more interest-bearing trust accounts in investments

authorized by Code Section 36-80-3 or by Chapter 83 of Title 36.

(b) The financial institution in which the funds are deposited shall remit, after service charges or fees are deducted, the interest generated by such funds directly, at least quarterly and within 30 days of receipt, to the Georgia Indigent Defense Council for distribution to the counties pursuant to Article 2 of Chapter 12 of Title 17. With each remittance the financial institution shall send a statement showing the name of the county, deposits and withdrawals from the account or accounts, interest paid, service charges or fees of the bank or other depository, and the net remittance. The Georgia Indigent Defense Council shall allocate all interest received from such funds deposited in interest-bearing trust accounts to the counties pursuant to Article 2 of Chapter 12 of Title 17.

(c) In counties where the service charges or fees of the bank or depository would exceed the interest received from funds subject to this Code section, the sheriff shall be exempt from subsections (a) and (b) of this Code section. In such counties, the sheriff shall send a written notice to the Georgia Indigent Defense Council.

O.C.G.A. § 17-7-1.

When there is no secure jail in a county or when it is deemed necessary by the sheriff, any person committing an offense in the county may be sent to a jail in another county determined to be suitable by the sheriff. The county where the offense is committed shall be primarily liable for jail fees and costs and shall pay the same monthly in advance to the county holding the prisoner. For the purpose of raising funds to pay the costs, the county

governing authority may levy and collect an additional tax.

O.C.G.A. § 36-8-1.

(a) The county governing authority shall have authority to elect or appoint such number of county police as in its discretion it deems proper, provided that the county governing authority complies with the provisions of this Code section. Any person elected or appointed to the county police shall possess the qualifications prescribed in Code Section 35-8-8.

(b)(1) Each county governing authority may authorize, through proper resolution or ordinance, the creation of a county police force. No resolution or ordinance adopted pursuant to this paragraph shall become effective until the governing authority of the county has submitted to the qualified electors of the county the question of whether the resolution or ordinance shall be approved or rejected. The county governing authority shall establish the date of the election in compliance with Code Section 21-2-540, which shall be not less than 30 days after the call of the election, and shall notify the county election superintendent of its decision as to the date. The election superintendent shall issue the call for the election and shall specify that the election shall be held on the date determined by the county governing authority. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of the county. The ballot shall have written or printed thereon the following:

'( ) YES ( ) NO

Shall the resolution or ordinance adopted by the governing authority of _____ County to create a county police force be approved?'

(2) Those persons desiring to vote in favor of the creation of a county police force shall vote 'Yes,' and those persons opposed to the creation of a county police force shall vote 'No.' If more than one-half of the votes cast on the question are in favor of the creation of a county police force, then the county governing authority shall be authorized to create a county police force pursuant to the provisions of this chapter; otherwise, a county police force shall not be created. If the resolution or ordinance is rejected by the qualified electors, the question of the creation of a county police force may not again be submitted to the voters of the county within 48 months immediately following the month in which such election was held. The county election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections, except as otherwise provided in paragraph (1) of this subsection. He shall canvass the returns and declare and certify the result of the election to the Secretary of State. The expense of any such election shall be borne by the county wherein the election was held.

(c) The provisions of subsection (b) shall not apply to any county which has created a county police force prior to January 1, 1992, which county police force remains in existence and operational.

(d) Any county police force created by a county governing authority between January 1, 1992, and February 25, 1992, shall be abolished no later than December 31, 1992, unless, prior to said latter date, a resolution or ordinance

authorizing the creation of a county police force is adopted by the county governing authority and approved by the qualified electors of the county in a special election as provided in subsection (b) of this Code section.

O.C.G.A. § 35-3-36.

(a) All criminal justice agencies within the state shall submit to the center fingerprints, descriptions, photographs when specifically requested, and other identifying data on persons who have been lawfully arrested or taken into custody in the state for all felonies and for the misdemeanors and violations designated in subparagraph (A) of paragraph (1) of Code Section 35-3-33 and for persons in the categories enumerated in subparagraphs (B), (C), and (D) of paragraph (1) of Code Section 35-3-33.

(b) It shall be the duty of all chiefs of police, sheriffs, prosecuting attorneys, courts, judges, parole and probation officers, wardens, or other persons in charge of penal and correctional institutions in this state to furnish the center with any other data deemed necessary by the center to carry out its responsibilities under this article.

(c) All persons in charge of law enforcement agencies shall obtain or cause to be obtained fingerprints in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation, full-face and profile photographs if photo equipment is available, and other available identifying data of each person arrested or taken into custody for an offense of a type designated in paragraph (1) of Code Section 35-3-33, of all persons arrested or taken into custody as fugitives from justice, and of all unidentified human corpses in their jurisdictions; but photographs need not be taken if it is known that photographs of the

type listed taken within the previous year are on file. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated may be taken at the discretion of the law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge or cleared of the offense through court proceedings shall have any fingerprint record taken in connection therewith returned if required by statute or upon court order and any such dispositions must also be reported to the center.

(d) Fingerprints and other identifying data required to be taken under subsection (c) of this Code section shall be forwarded within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the agency concerned; but, if not forwarded, the fingerprint record shall be marked 'Photo available' and the photographs shall be forwarded subsequently if the center so requests.

(e) All persons in charge of law enforcement agencies shall submit to the center detailed descriptions of arrest warrants and related identifying data immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the center of the service or withdrawal. In addition, the agency concerned must annually, no later than January 31 of each year, and at other times if requested by the center confirm to the center all arrest warrants of this type which continue to be outstanding.

(f) All persons in charge of state penal and correctional institutions shall obtain fingerprints in accordance with the fingerprint system of identification established by the director of the Federal Bureau of Investigation or as otherwise directed by the center and full-face and profile photographs of all persons received on commitment to these institutions. The prints and photographs so taken shall be forwarded to the center together with any other identifying data requested within ten days after the arrival at the institution of the person committed. At the time of release of any person committed to a correctional institution, the institution shall again obtain fingerprints as provided for in this subsection and forward them to the center within ten days along with any other related information requested by the center. Immediately upon release, the institution shall notify the center of the release of the person.

(g) All persons in charge of law enforcement agencies, all clerks of court, all municipal judges where they have no clerks, all magistrates, and all persons in charge of state and county probation and parole offices shall supply the center with the information described in Code Section 35-3-33 on the basis of the forms and instructions to be supplied by the center.

(h) All persons in charge of law enforcement agencies in this state shall furnish the center with any other identifying data required in accordance with guidelines established by the center. All law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the center copies of identifying data, as required in accordance with center guidelines, in those files as will aid in

establishing the nucleus of the state criminal identification file.

(i) All criminal justice agencies within the state shall submit to the center, periodically at a time and in such form as prescribed by the center, information regarding only the cases within its jurisdiction and in which it is or has been actively engaged. Such report shall be known as the 'uniform crime report' and shall contain crimes reported and otherwise processed during the period preceding the period of report, including the number and nature of offenses committed, the disposition of such offenses, and such other information as the center shall specify, relating to the method, frequency, cause, and prevention of crime. The incident/complaint report forms used by criminal justice agencies shall, when applicable, include the identification of any victim who is a student and the name of the school attended by any such student.

(j) Any governmental agency which is not included within the description of those departments and agencies required to submit the uniform crime report provided for in subsection (i) of this Code section but which desires to submit a report shall be furnished with the proper forms by the center. When a report is received by the center from a governmental agency not required to make a report, the information contained therein shall be included within the periodic compilation provided for in paragraph (9) of Code Section 35-3-33.

(k) Upon the request of the center, local law enforcement agencies shall periodically provide for audit samples of incident reports for the preceding reporting period so that the center may help ensure agency compliance with national and state uniform crime reporting requirements.

(l) All law enforcement agencies within the state shall report to the center, in a manner prescribed by the center, all persons wanted by and all vehicles and identifiable property stolen from their jurisdictions. The report shall be made as soon as practicable after the investigating department or agency either ascertains that a vehicle or identifiable property has been stolen or obtains a warrant for an individual's arrest or determines that there are reasonable grounds to believe that the individual has committed the crime. In no event shall this time exceed 12 hours after the investigating department or agency determines that it has grounds to believe that a vehicle or property was stolen or that the wanted person should be arrested.

(m) If at any time after making a report as required by subsection (l) of this Code section it is determined by the reporting department or agency that a person is no longer wanted due to his apprehension or any other factor or when a vehicle or property stolen is recovered, the law enforcement agency shall immediately notify the center of such status. Furthermore, if the agency making the apprehension or recovery is other than the one which made the original wanted or stolen report, then it shall immediately notify the originating agency of the full particulars relating to the apprehension or recovery.

(n) Neither the center nor its employees shall be responsible for the accuracy of information contained in records representing wanted persons, missing persons, and stolen serial numbered property established in computerized files on the Georgia Criminal Justice Information System (CJIS) network or in computerized files maintained by the Federal Bureau of Investigation National Crime Information Center (NCIC). Criminal justice agencies establishing

such records bear all responsibilities for entry, update, and removal as dictated by actions of criminal justice employees and officials.

O.C.G.A. § 36-1-3.

Every county is a body corporate, with power to sue or be sued in any court.

O.C.G.A. § 36-1-21.

(a) The governing authority of any county is authorized to provide by ordinance or resolution for the creation of a civil service system for employees of the county, other than elected officials or persons appointed to positions for specified terms.

(b) Subsequent to the creation of a civil service system, the county governing authority which created the system may provide by ordinance or resolution that positions of employment within departments subject to the jurisdiction of elected county officers or subject to the jurisdiction of other commissions, boards, or bodies of the county shall be subject to and covered by the civil service system upon the written application of the elected county officer, commission, board, or body having the power of appointment, employment, or removal of employees of the officer, department, commission, board, or body. Once positions of employment are made subject to the civil service system, such positions shall not be removed thereafter from the coverage of the civil service system.

(c) A civil service system created pursuant to the authority of this Code section shall be administered in such manner and pursuant to such rules and regulations as may be provided for by resolution or ordinance of the county governing authority which created the system.

(d)(1) The powers granted to the governing authorities of counties by this Code section:

(A) Shall not supersede or replace any power granted by any local constitutional amendment to the General Assembly to provide by law for a civil service or merit system for any county;

(B) Shall not supersede or replace any law enacted by the General Assembly pursuant to the authority of a local constitutional amendment described in subparagraph (A) of this paragraph; and

(C) Shall be in addition to any power granted by local constitutional amendment directly to the governing authority of any county to provide by ordinance or resolution for a civil service or merit system for such county.

(2) As used in paragraph (1) of this subsection, the term 'local constitutional amendment' means any constitutional amendment described in subparagraph (a) of Paragraph IV of Section I of Article XI of the Constitution of the State of Georgia which has been continued in force and effect pursuant to the authority of said subparagraph (a) of said cited constitutional provision and which has not been repealed pursuant to the authority of subparagraph (b) of said cited constitutional provision.

O.C.G.A. § 36-8-2.

The terms for which county police shall be elected or appointed shall be left to the discretion of the county governing authority. Such county police or any member thereof may be removed from office at any time, at the will of the county governing authority, with or without cause. A resolution or ordinance authorizing the creation of a

county police force adopted by a county governing authority and approved by the qualified electors of the county in a special election as provided in subsection (b) of Code Section 36-8-1 shall not affect the power of the county governing authority to abolish a county police force at any time.

O.C.G.A. § 36-8-5.

Under the direction and control of the county governing authority, the county police shall have:

(1) The same power to make arrests and to execute and return criminal warrants and processes in the county of their election or appointment only, as sheriffs have; and

(2) All the powers of sheriffs as peace officers in the county of their election or appointment.

O.C.G.A. § 36-9-5.

(a) It is the duty of the county governing authorities to erect or repair, when necessary, their respective courthouses and jails and all other necessary county buildings and to furnish each with all the furniture necessary for the different rooms, offices, or cells.

(b) The county buildings shall be erected and kept in order and repaired at the expense of the county under the direction of the county governing authority which is authorized to make all necessary contracts for that purpose.

(c)(1) As used in this subsection, the term 'county document' means:

(A) Records documenting property rights, deeds, and wills; and

(B) Tax records documenting ownership of property and the latest valuations of property.

(2) A county officer, the county board of tax assessors, or any other officer of the county having the responsibility or custody of any county documents set forth in paragraph (1) of this subsection shall, at night or when the county office is closed, keep such county documents:

(A) In a fireproof safe or vault;

(B) In fireproof cabinets;

(C) On microfilm, pursuant to the standards set forth in Article 6 of Chapter 18 of Title 50, only if a security copy has been sent to the Georgia State Archives; or

(D) At a location not more than 100 miles from the county in a data storage and retrieval facility approved by the county governing authority within the State of Georgia which is in a building or facility which is in compliance with the fire safety standards applicable to archives and record centers as established by the National Fire Protection Association in Standard No. 232, as such standard was adopted on August 11, 1995. If documents are stored outside the county where the documents were created, the government entity shall bear all costs of transporting such documents back to the county of origin for purposes of responding to requests under Article 4 of Chapter 18 of Title 50, relating to inspections of public records. Such documents shall be made available to the requester.

(3) It is the duty of the county governing authorities to furnish the necessary fireproof equipment, microfilming equipment and supplies, or some other safe facility for such county documents.

(4) On and after January 1, 1985, county documents shall be stored only in accordance with the provisions of this subsection. The local fire marshal in each county shall monitor the various county offices in the county to assure compliance with the provisions of this subsection.

O.C.G.A. § 42-4-1.

(a) By virtue of their offices, sheriffs are jailers of the counties and have the authority to appoint other jailers, subject to the supervision of the county governing authority, as prescribed by law.

(b) By virtue of their offices, chiefs of police are the jailers of the municipal corporations and have the authority to appoint other jailers, subject to the supervision of the municipal governing authority, as prescribed by law. Each jailer of a municipal corporation shall maintain the records required of sheriffs by subsection (a) of Code Section 42-4-7.

O.C.G.A. § 42-4-4.

(a) It shall be the duty of the sheriff:

(1) To take from the outgoing sheriff custody of the jail and the bodies of such persons as are confined therein, along with the warrant or cause of commitment;

(2) To furnish persons confined in the jail with medical aid, heat, and blankets, to be reimbursed if necessary from the county treasury, for neglect of which he shall be liable to suffer the penalty prescribed in this Code section; provided, however, that, with respect to an inmate covered under Article 3 of this chapter, the officer in charge will provide such person access to medical aid and may

arrange for the person's health insurance carrier to pay the health care provider for the aid rendered; and

(3) To take all persons arrested or in execution under any criminal or civil process to the jail of an adjoining county, or to the jail of some other county if the latter is more accessible, if the jail of his county is in an unsafe condition, under such rules as are prescribed in this chapter.

(b) Subject to the provisions of this subsection and except as provided by law or as directed by a court of competent jurisdiction, a sheriff shall not release a prisoner from his custody prior to the lawful completion of his sentence including any lawful credits under a trusty system. The provision shall not, however, preclude a sheriff from designating an inmate as a trusty and utilizing him in a lawful manner and, furthermore, this provision shall not preclude a sheriff from transferring a prisoner to another jail in another county if the sheriff concludes that such transfer is in the best interest of the prisoner or that such transfer is necessary for the orderly administration of the jail.

(c) Any sheriff or deputy who fails to comply with this Code section shall be fined for contempt, as is the clerk of the superior court in similar cases. The sheriff or deputy shall also be subject to removal from office as prescribed in Code Section 15-6-82.

O.C.G.A. § 42-4-5.

(a) No jailer, by duress or other cruel treatment, shall make or induce an inmate to accuse or give evidence against another; nor shall he be guilty of willful inhumanity or oppression to any inmate under his care and custody.

(b) Any jailer who violates subsection (a) of this Code section shall be punished by removal from office and imprisonment for not less than one year nor longer than three years.

O.C.G.A. § 42-4-7.

(a) The sheriff shall keep a record of all persons committed to the jail of the county of which he or she is sheriff. This record shall contain the name of the person committed, such person's age, sex, race, under what process such person was committed and from what court the process issued, the crime with which the person was charged, the date of such person's commitment to jail, the day of such person's discharge, under what order such person was discharged, and the court from which the order issued. This record shall be subject to examination by any person in accordance with the provisions of Article 4 of Chapter 18 of Title 50, relating to the inspection of public records.

(b)(1) The sheriff, chief jailer, warden, or other officer designated by the county as custodian of inmates confined as county inmates for probation violations of felony offenses or as provided in subsection (a) of Code Section 17-10-3 may award earned time allowances to such inmates based on institutional behavior. Earned time allowances shall not be awarded which exceed one-half of the period of confinement imposed.

(2) While an inmate sentenced to confinement as a county inmate is in custody as a county inmate, the custodian of such inmate may award an earned time allowance consistent with this subsection and subsection (b) of Code Section 17-10-4 based on the institutional behavior of such inmate while in custody as a county inmate.

(3) An inmate sentenced to confinement as a county inmate shall be released at the expiration of his or her sentence less the time deducted for earned time allowances.

(c) Commencing January 1, 1984, those provisions of subsection (b) of this Code section which provide for good-time allowances to be awarded to inmates sentenced to confinement as county inmates as provided in subsection (a) of Code Section 17-10-3 shall apply to all such inmates in confinement on December 31, 1983, and all inmates who commit crimes on or after January 1, 1984, and are subsequently convicted and sentenced to confinement as county inmates. Conversion of the computation of the sentences of county inmates in confinement on December 31, 1983, from earned time governed sentences to good-time governed sentences shall be made by the sheriff or other custodian of such inmates. Commencing July 1, 1994, those provisions of subsection (b) of this Code section which provide for good-time allowances to be awarded to inmates sentenced to confinement as county inmates for probation violations of felony offenses shall apply to all such inmates in confinement on June 30, 1994, and all inmates whose probation is revoked or who commit crimes on or after July 1, 1994, and are subsequently sentenced to confinement as county inmates. Commencing July 1, 2000, the award of earned time allowances pursuant to subsection (b) of this Code section for persons who commit crimes on or after July 1, 2000, and are subsequently convicted and sentenced to confinement as county inmates and inmates whose probation is revoked on or after July 1, 2000, or who commit crimes on or after July 1, 2000, and are subsequently sentenced to confinement as county inmates is not

automatic or mandatory but shall be based upon institutional behavior.

O.C.G.A. § 42-4-11.

In all cases in which a change of venue is made, the sheriff of the county from which a person in custody is to be moved shall carry the person to the county to which the change of venue was directed and deliver him to the sheriff of such county, who shall then take charge of the person as in other cases. The sheriff of the county from which the person is to be moved shall carry with him and deliver to the sheriff the warrant under which the person was arrested or the commitment.

O.C.G.A. § 42-4-12.

Except as otherwise provided in this Code section, any sheriff, constable, keeper of a jail, or other officer whose duty it is to receive persons charged with or guilty of an indictable offense who refuses to receive and take charge of such a person shall, upon conviction thereof, be guilty of a misdemeanor and shall be punished by a fine of not more than $1,000.00. A sheriff, constable, keeper of a jail, or other officer whose duty it is to receive persons charged with or guilty of an indictable offense shall be authorized to refuse acceptance of any person who has not received medical treatment for obvious physical injuries or conditions of an emergency nature. Upon such refusal, it shall be the responsibility of the arresting agency to take the individual to a health care facility or health care provider in order to secure a medical release. Upon medical release by the health care facility or health care provider, the sheriff, constable, or keeper of the jail must assume custody of the individual; provided, however, that in all cases the sheriff, constable, or keeper of the jail must

assume custody where no health care facility is located in the county in which the arrest occurred and, in such instances, the governing authority of the arresting agency shall pay all costs related to the medical release.

O.C.G.A. § 42-5-2.

(a) Except as provided in subsection (b) of this Code section, it shall be the responsibility of the governmental unit, subdivision, or agency having the physical custody of an inmate to maintain the inmate, furnishing him food, clothing, and any needed medical and hospital attention; to defend any habeas corpus or other proceedings instituted by or on behalf of the inmate; and to bear all expenses relative to any escape and recapture, including the expenses of extradition. Except as provided in subsection (b) of this Code section, it shall be the responsibility of the department to bear the costs of any reasonable and necessary emergency medical and hospital care which is provided to any inmate after the receipt by the department of the notice provided by subsection (a) of Code Section 42-5-50 who is in the physical custody of any other political subdivision or governmental agency of this state, except a county correctional institution, if the inmate is available and eligible for the transfer of his custody to the department pursuant to Code Section 42-5-50. Except as provided in subsection (b) of this Code section, the department shall also bear the costs of any reasonable and necessary follow-up medical or hospital care rendered to any such inmate as a result of the initial emergency care and treatment of the inmate. With respect to state inmates housed in county correctional institutions, the department shall bear the costs of direct medical services required for emergency medical conditions posing an immediate threat to life or limb if the inmate cannot be placed in a state

institution for the receipt of this care. The responsibility for payment will commence when the costs for direct medical services exceed an amount specified by rules and regulations of the Board of Corrections. The department will pay only the balance in excess of the specified amount. Except as provided in subsection (b) of this Code section, it shall remain the responsibility of the governmental unit having the physical custody of an inmate to bear the costs of such medical and hospital care, if the custody of the inmate has been transferred from the department pursuant to any order of any court within this state. The department shall have the authority to promulgate rules and regulations relative to payment of such medical and hospital costs by the department.

(b)(1) The officer in charge will provide an inmate access to medical services or hospital care and may arrange for the inmate's health insurance carrier to pay the health care provider for the services or care rendered as provided in Article 3 of Chapter 4 of this title.

(2) With respect to an inmate covered under Article 3 of Chapter 4 of this title, the costs of any medical services, emergency medical and hospital care, or follow-up medical or hospital care as provided in subsection (a) of this Code section for which a local governmental unit is responsible shall mean the costs of such medical services and hospital care which have not been paid by the inmate's health insurance carrier or the Department of Community Health.

CALIFORNIA CONSTITUTION
ARTICLE 4 LEGISLATIVE

SEC. 18. (a) The Assembly has the sole power of impeachment. Impeachments shall be tried by the Senate. A

person may not be convicted unless, by rollcall vote entered in the journal, two thirds of the membership of the Senate concurs.

(b) State officers elected on a statewide basis, members of the State Board of Equalization, and judges of state courts are subject to impeachment for misconduct in office. Judgment may extend only to removal from office and disqualification to hold any office under the State, but the person convicted or acquitted remains subject to criminal punishment according to law.

CALIFORNIA CONSTITUTION
ARTICLE 11 LOCAL GOVERNMENT

SEC. 1. (a) The State is divided into counties which are legal subdivisions of the State. The Legislature shall prescribe uniform procedure for county formation, consolidation, and boundary change. Formation or consolidation requires approval by a majority of electors voting on the question in each affected county. A boundary change requires approval by the governing body of each affected county. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

(b) The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide

for other officers whose compensation shall be prescribed by the governing body. The governing body shall provide for the number, compensation, tenure, and appointment of employees.

CALIFORNIA CONSTITUTION
ARTICLE 11 LOCAL GOVERNMENT

SEC. 4. County charters shall provide for:

(a) A governing body of 5 or more members, elected (1) by district or, (2) at large, or (3) at large, with a requirement that they reside in a district. Charter counties are subject to statutes that relate to apportioning population of governing body districts.

(b) The compensation, terms, and removal of members of the governing body. If a county charter provides for the Legislature to prescribe the salary of the governing body, such compensation shall be prescribed by the governing body by ordinance.

(c) An elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation, terms and removal.

(d) The performance of functions required by statute.

(e) The powers and duties of governing bodies and all other county officers, and for consolidation and segregation of county officers, and for the manner of filling all vacancies occurring therein.

(f) The fixing and regulation by governing bodies, by ordinance, of the appointment and number of assistants, deputies, clerks, attaches, and other persons to be employed, and for the prescribing and regulating by such

bodies of the powers, duties, qualifications, and compensation of such persons, the times at which, and terms for which they shall be appointed, and the manner of their appointment and removal.

(g) Whenever any county has framed and adopted a charter, and the same shall have been approved by the Legislature as herein provided, the general laws adopted by the Legislature in pursuance of Section 1(b) of this article, shall, as to such county, be superseded by said charter as to matters for which, under this section it is competent to make provision in such charter, and for which provision is made therein, except as herein otherwise expressly provided.

(h) Charter counties shall have all the powers that are provided by this Constitution or by statute for counties.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 815.2. (a) A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.

(b) Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 970.2. A local public entity shall pay any judgment in the manner provided in this article. A writ of mandate is an appropriate remedy to compel a local public entity to perform any act required by this article.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 3060. An accusation in writing against any officer of a district, county, or city, including any member of the governing board or personnel commission of a school district or any humane officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed. An accusation may not be presented without the concurrence of at least 12 grand jurors, or at least eight grand jurors in a county in which the required number of members of the grand jury is 11.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 12524. The Attorney General may, from time to time, and as often as occasion may require, call into conference the district attorneys and sheriffs of the several counties and the chiefs of police of the several municipalities of this state, or such of them as he may deem advisable, for the purpose of discussing the duties of their respective offices,

with the view of uniform and adequate enforcement of the laws of this state as contemplated by Section 13 of Article V of the Constitution of this state.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 12560. The Attorney General has direct supervision over the sheriffs of the several counties of the State, and may require of them written reports concerning the investigation, detection and punishment of crime in their respective jurisdictions. Whenever he deems it necessary in the public interest he shall direct the activities of any sheriff relative to the investigation or detection of crime within the jurisdiction of the sheriff, and he may direct the service of subpenas, warrants of arrest, or other processes of court in connection therewith.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 12561. Whenever he deems it necessary in the public interest, the Attorney General may appoint some competent person to perform the duties of sheriff with respect to the investigation or detection of a particular crime and cause the arrest of persons in connection therewith. Any person so appointed has all the powers of a sheriff with respect to the particular matter.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 23004. A county may:

(a) Sue and be sued.

(b) Purchase, receive by gift or bequest, and hold land within its limits, or elsewhere when permitted by law.

(c) Make contracts and purchase and hold personal property necessary to the exercise of its powers.

(d) Manage, sell, lease, or otherwise dispose of its property as the interests of its inhabitants require.

(e) Levy and collect taxes authorized by law.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 23013. The board of supervisors of any county may, by resolution, establish a department of corrections, to be headed by an officer appointed by the board, which shall have jurisdiction over all county functions, personnel, and facilities, or so many as the board names in its resolution, relating to institutional punishment, care, treatment, and rehabilitation of prisoners, including, but not limited to, the county jail and industrial farms and road camps, their functions and personnel.

The boards of supervisors of two or more counties may, by agreement and the enactment of ordinances in conformity thereto, establish a joint department of corrections to serve

all the counties included in the agreement, to be headed by an officer appointed by the boards jointly.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 24000. The officers of a county are:

(a) A district attorney.

(b) A sheriff.

(c) A county clerk.

(d) A controller.

(e) An auditor, who shall be ex officio controller.

(f) A treasurer.

(g) A recorder.

(h) A license collector.

(i) A tax collector, who shall be ex officio license collector.

(j) An assessor.

(k) A superintendent of schools.

(l) A public administrator.

(m) A coroner.

(n) A surveyor.

(o) Members of the board of supervisors.

(p) A county veterinarian.

(q) A fish and game warden.

(r) A county librarian.

(s) A county health officer.

(t) An administrative officer.

(u) A director of finance.

(v) A road commissioner.

(w) A public guardian.

(x) Such other officers as are provided by law.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 24205. (a) Notwithstanding any provision of Section 24204, or any other statute, the office of sheriff shall be filled by election as provided in this chapter for elective county officers, and vacancies shall be filled as provided by law for filling elective county offices, unless the county or city and county is chartered and such charter provides for election of the sheriff by vote of the electors.

(b) In any charter county or city and county, whose charter provides for filling the office of sheriff other than by election by vote of the electors, in conflict with subdivision (c) of Section 4 of Article XI of the California Constitution, the office of sheriff of such charter county or city and county shall be filled as provided in subdivision (a).

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 24250. Sheriffs, clerks, recorders, treasurers, and auditors, shall have their offices at the county seat in the courthouse, hall of records, jail, or other buildings. However, these officials may situate their offices outside the county seat, provided that the offices are conveniently located and easily accessible to the public, and notice of their location is prominently displayed in the county administration building and other appropriate county facilities.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 25300. The board of supervisors shall prescribe the compensation of all county officers and shall provide for the number, compensation, tenure, appointment and conditions of employment of county employees.

Except as otherwise required by Section 1 or 4 of Article XI of the California Constitution, such action may be taken by resolution of the board of supervisors as well as by ordinance.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 25303. The board of supervisors shall supervise the official conduct of all county officers, and officers of all

districts and other subdivisions of the county, and particularly insofar as the functions and duties of such county officers and officers of all districts and subdivisions of the county relate to the assessing, collecting, safekeeping, management, or disbursement of public funds.

It shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports and present their books and accounts for inspection.

This section shall not be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and district attorney of a county. The board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county.

Nothing contained herein shall be construed to limit the budgetary authority of the board of supervisors over the district attorney or sheriff.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 26605. Notwithstanding any other provision of law, except in counties in which the sheriff, as of July 1, 1993, is not in charge of and the sole and exclusive authority to keep the county jail and the prisoners in it, the sheriff shall take charge of and be the sole and exclusive authority to keep the county jail and the prisoners in it, except for work furlough facilities where by county ordinance the

work furlough administrator is someone other than the sheriff.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 34501. Every city organized pursuant to this part shall have a name, and by such name has perpetual succession, and may sue and be sued. It shall have a common seal, alterable at the pleasure of the legislative body.

CALIFORNIA GOVERNMENT CODE SECTION

Cal. Gov. Code

§ 53069.8. (a) The board of supervisors of any county may contract on behalf of the sheriff of that county, and the legislative body of any city may contract on behalf of the chief of police of that city, to provide supplemental law enforcement services to:

(1) Private individuals or private entities to preserve the peace at special events or occurrences that happen on an occasional basis.

(2) Private nonprofit corporations that are recipients of federal, state, county, or local government low-income housing funds or grants to preserve the peace on an ongoing basis.

(3) Private entities at critical facilities on an occasional or ongoing basis. A "critical facility" means any building, structure, or complex that in the event of a disaster, whether natural or manmade, poses a threat to

public safety, including, but not limited to, airports, oil refineries, and nuclear and conventional fuel powerplants.

(b) Contracts entered into pursuant to this section shall provide for full reimbursement to the county or city of the actual costs of providing those services, as determined by the county auditor or auditor-controller, or by the city, as the case may be.

(c) The services provided pursuant to this section shall be rendered by regularly appointed full-time peace officers, as defined in Section 830.1 of the Penal Code.

(d) Peace officer rates of pay shall be governed by a memorandum of understanding.

(e) A contract entered into pursuant to this section shall encompass only law enforcement duties and not services authorized to be provided by a private patrol operator, as defined in Section 7582.1 of the Business and Professions Code.

(f) Contracting for law enforcement services, as authorized by this section, shall not reduce the normal and regular ongoing service that the county, agency of the county, or city otherwise would provide.

(g) Prior to contracting for ongoing services under paragraph (2) or (3) of subdivision (a), the board of supervisors or legislative body, as applicable, shall discuss the contract and the requirements of this section at a duly noticed public hearing.

ILLINOIS CONSTITUTION

Ill. Const. Art. VII, sec. 2

ARTICLE VII LOCAL GOVERNMENT

Section 1. General Assembly to provide for local government. The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable. The General Assembly shall not incorporate as a city or town, nor shall it authorize to be incorporated as a city or town, any territory lying within one mile of the corporate limits of any other city or town having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within three miles of the corporate limits of any other city or town having a population of 10,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within four miles of the corporate limits of any other city or town having a population of 25,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within five miles of the corporate limits of any other city or town having a population of 50,000 or more according to the most recent decennial census of population taken by order of Congress. Notwithstanding the foregoing limitations, the General Assembly may incorporate a city or town by an act adopted by vote of three-fifths of all the members of each house.

Sec. 2 Sheriffs. In each county a Sheriff shall be elected by the qualified voters thereof at the same time and places as

members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law.

Sec. 3. Merged or consolidated counties. Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Constitution, and may exercise any authority conferred by law on counties, or on cities and towns, or both, as the General Assembly may provide.

Illinois Compiled Statutes
Counties Code
55 ILCS 5/

(55 ILCS 5/5-1106) Sec. 5-1106. County offices, equipment and expenditures. It shall be the duty of the county board of each county: First – To erect or otherwise provide when necessary, and the finances of the county will justify it, and keep in repair, a suitable court house, jail and other necessary county buildings, and to provide proper rooms and offices for the accommodation of the county board, State's attorney, county clerk, county treasurer, recorder and sheriff, and to provide suitable furniture therefor. But in counties not under township organization, no appropriations shall be made for the erection of public buildings, without first submitting the proposition to a vote of the people of the county, and the vote shall be submitted in the same manner and under the same restrictions as provided for in like cases in Section 5-2001; and the votes therefor shall be "For taxation," specifying the object, and those against shall be "Against taxation," specifying the object. Second – To provide and keep in repair, when the finances of the county permit, suitable fireproof safes or offices for

the county clerk, State's attorney, county treasurer, recorder and sheriff. Third – To provide reasonable and necessary expenses for the use of the county board, county clerk, county treasurer, recorder, sheriff, coroner, State's attorney, superintendent of schools, judges and clerks of courts, and supervisor of assessment. Fourth – cause to be published at the close of each annual, regular or special meeting of the board, a brief statement of the proceedings thereof in one or more newspapers published in the county, in which shall be set forth the name of every individual who shall have had any account audited and allowed by the board and the amount of such claim as allowed, and the amount claimed, and also their proceedings upon the equalization of the assessment roll: Provided, that no publication in a newspaper shall be required unless the same can be done without unreasonable expense. Fifth – To make out at its meeting in September, annually, a full and accurate statement of the receipts and expenditures of the preceding year, which statement shall contain a full and correct description of each item, from whom and on what account received, to whom paid, and on what account expended, together with an accurate statement of the finances of the county at the end of the fiscal year, including all debts and liabilities of every description, and the assets and other means to discharge the same; and within 30 days thereafter to cause the same to be posted up at the court house door, and at 2 other places in the county, and published for one week in some newspaper therein, if there is one, and the same can be done without unreasonable expense. Sixth – To provide proper rooms and offices, and for the repair thereof, for the accommodation of the circuit court of the county and for the clerks for such court, and to provide suitable furnishings for such rooms and offices, and to furnish fire proof safes, and the repair

thereof, for the offices of the clerks of the circuit court of the county. The court rooms and furnishings thereof shall meet with reasonable minimum standards prescribed by the Supreme Court of Illinois. Such standards shall be substantially the same as those generally accepted in court rooms as to general furnishings, arrangement of bench, tables and chairs, cleanliness, convenience to litigants, decorations, lighting and other such matters relating to the physical appearance of the court room.

Illinois Compiled Statutes
Counties Code
730 ILCS 125/

(730 ILCS 125/2) Sec. 2. The Sheriff of each county in this State shall be the warden of the jail of the county, and have the custody of all prisoners in the jail, except when otherwise provided in the "County Department of Corrections Act".

(730 ILCS 125/5) Sec. 5. All costs of maintaining persons committed for violations of Illinois law, shall be the responsibility of the county. All costs of maintaining persons committed under any ordinance or resolution of a unit of local government, including medical costs, is the responsibility of the unit of local government enacting the ordinance or resolution, and arresting the person.

(730 ILCS 125/12) Sec. 12. Whenever the Warden of the jail of any county deems such jail insufficient to secure the prisoners confined therein, he shall give notice thereof to the county board.

(730 ILCS 125/20) Sec. 20. Cost and expense; commissary fund. (a) The cost and expense of keeping, maintaining

and furnishing the jail of each county, and of keeping and maintaining the prisoner thereof, except as otherwise provided by law, shall be paid from the county treasury, the account therefor being first settled and allowed by the county board. The county board may require convicted persons confined in its jail to reimburse the county for the expenses incurred by their incarceration to the extent of their ability to pay for such expenses. The warden of the jail shall establish by regulation criteria for a reasonable deduction from money credited to any account of an inmate to defray the costs to the county for an inmate's medical care. The State's Attorney of the county in which such jail is located may, if requested by the County Board, institute civil actions in the circuit court of the county in which the jail is located to recover from such convicted confined persons the expenses incurred by their confinement. The funds recovered shall be paid into the county treasury. (b) When a prisoner is released from the county jail after the completion of his or her sentence and has money credited to his or her account in the commissary fund, the sheriff or a person acting on the authority of the sheriff must mail a check in the amount credited to the prisoner's account to the prisoner's last known address. If after 30 days from the date of mailing of the check, the check is returned undelivered, the sheriff must transmit the amount of the check to the county treasurer for deposit into the commissary fund. Nothing in this subsection (b) constitutes a forfeiture of the prisoner's right to claim the money accredited to his or her account after the 30-day period.

GENERAL LAWS OF MASSACHUSETTS
PART I.
ADMINISTRATION OF THE GOVERNMENT

TITLE XVIII.
PRISONS, IMPRISONMENT, PAROLES AND PARDONS

CHAPTER 126. JAILS, HOUSES OF CORRECTION AND REFORMATION, AND COUNTY INDUSTRIAL FARMS

JAILS, HOUSES OF CORRECTION AND PRISONERS

Chapter 126: Section 16 Custody and control of jails and houses of correction; jailer; assistants; bond

Section 16. The sheriff shall have custody and control of the jails in his county, and, except in Suffolk county, of the houses of correction therein, and of all prisoners committed thereto, and shall keep the same himself or by his deputy as jailer, superintendent or keeper, and shall be responsible for them. The jailer, superintendent or keeper shall appoint subordinate assistants, employees and officers and shall be responsible for them. In Suffolk county the penal institutions commissioner shall appoint a superintendent of the house of correction, who shall hold office at the pleasure of said commissioner. A sheriff, who acts as jailer, superintendent or keeper, or a jailer, superintendent or keeper appointed by the sheriff, before entering upon the performance of his duties as such, and thereafter, at intervals of not more than one year, so long as he continues so to act or to hold such office, as the case may be, shall give to the state treasurer a bond, with such

sureties as the superior court shall order and approve, conditioned faithfully to perform his duties.

TITLE XVIII.
PRISONS, IMPRISONMENT, PAROLES AND PARDONS
CHAPTER 127. OFFICERS AND INMATES OF PENAL AND REFORMATORY INSTITUTIONS. PAROLES AND PARDONS

PRISONERS

Chapter 127: Section 30 Compensation to officers; reimbursement

Section 30. No compensation shall be allowed to an officer for the performance of any services required by sections twenty-three to twenty-nine, inclusive, but he shall be reimbursed by the commonwealth for his actual traveling expenses incurred in the performance of any duties therein required.

TITLE XVIII.
PRISONS, IMPRISONMENT, PAROLES AND PARDONS

CHAPTER 127. OFFICERS AND INMATES OF PENAL AND REFORMATORY INSTITUTIONS. PAROLES AND PARDONS

PRISONERS

Chapter 127: Section 33 Maintenance of order in institutions; enforcement of obedience

Section 33. The superintendents of all institutions under the jurisdiction of the department of correction and the superintendents and keepers of jails and houses of correction shall cause all necessary means to be used to

maintain order in the institutions under their supervision, enforce obedience, suppress insurrection and prevent escapes, and for that purpose they may at all times require the aid and utmost exertions of all the officers of the institution except the chaplain and the physician.

Michigan Compiled Laws: Constitution

ARTICLE VII
LOCAL GOVERNMENT (EXCERPT)

§ 4 County officers; terms, combination.

Sec. 4.

There shall be elected for four-year terms in each organized county a sheriff, a county clerk, a county treasurer, a register of deeds and a prosecuting attorney, whose duties and powers shall be provided by law. The board of supervisors in any county may combine the offices of county clerk and register of deeds in one office or separate the same at pleasure.

MISSISSIPPI CODE
CHAPTER 25: SHERIFFS

§ 19-25-1. Commission; term of office; oath and bond.

There shall be chosen one (1) sheriff for each county, who shall be commissioned by the Governor. The sheriff shall continue in office for the term of four (4) years and until his successor shall be qualified, unless sooner removed. Before he enters upon the duties of his office he shall take the oath prescribed by the Constitution, and give bond as prescribed by Section 19-25-5.

Tex. Code Crim. P. Art. 2.13

Art. 2.13. [37] [44] [45] Duties and powers

(a) It is the duty of every peace officer to preserve the peace within the officer's jurisdiction. To effect this purpose, the officer shall use all lawful means.

(b) The officer shall:

(1) in every case authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime;

(2) execute all lawful process issued to the officer by any magistrate or court;

(3) give notice to some magistrate of all offenses committed within the officer's jurisdiction, where the officer has good reason to believe there has been a violation of the penal law; and

(4) arrest offenders without warrant in every case where the officer is authorized by law, in order that they may be taken before the proper magistrate or court and be tried.

(c) It is the duty of every officer to take possession of a child under Article 62.009(g).

Tex. Code Crim. P. Art. 2.17

Art. 2.17. [41] [48] [49] Conservator of the peace

Each sheriff shall be a conservator of the peace in his county, and shall arrest all offenders against the laws of the State, in his view or hearing, and take them before the proper court for examination or trial. He shall quell and suppress all assaults and batteries, affrays, insurrections and unlawful assemblies. He shall apprehend and commit

to jail all offenders, until an examination or trial can be had.

(2)

No. 03-635

Supreme Court, U.S.
FILED
NOV 24 2003
OFFICE OF THE CLERK

In The

Supreme Court of the United States

WILLIE SANTONIO MANDERS,

Petitioner,

v.

WINSTON PETERSON, in his official capacity as Sheriff of Clinch County, Georgia,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

In addition to the parties listed by Petitioner, several additional parties (from the District Court) were not mentioned. Because the Eleventh Circuit Court of Appeals sometimes styled this case with a different name, they will be noted herein.

City of Homerville, Georgia Police Chief Thurman Lee was a defendant in District Court. Petition, Appendix at 1. City of Homerville police officer Bart Crews, Clinch County, Georgia Deputy Sheriff/Jailer Alan Brown, the City of Homerville, Georgia and Clinch County, Georgia were defendants in District Court. *Id.* None of these defendants were involved in the appeal proceedings in the Eleventh Circuit.

Winston Peterson, Sheriff of Clinch County, Georgia is the Respondent in this matter in his official capacity as a Georgia Sheriff. His potential liability in his personal, or individual, capacity is not at issue herein.

Pursuant to Supreme Court Rule 29.6, respondent states that there is no corporate entity involved in this matter.

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REASONS FOR DENYING THE WRIT

There is no compelling reason for the Court to grant the Petition in this case. Though the Petitioner's asserted claims are based upon federal law, 42 U.S.C. § 1983, the Petitioner's criticism of the Eleventh Circuit is based upon an assertion that the majority misinterpreted or misapplied state law. Under such circumstances, the Respondent contends that Supreme Court Rule 10 supports the denial of the Petition. Simply, "the asserted error consists of . . . [an alleged] misapplication of a properly stated rule of law." Supreme Court Rule 10.

This Court has already decided a similar case which outlined the law to be applied in circumstances such as those presented herein. *McMillian v. Monroe County, Alabama*, 520 U.S. 781, 117 S.Ct. 1734 (1997). Therein, this Court laid out the appropriate legal framework for determining whether sheriffs, in their official capacity, create state policy or county policy with regard to the areas in which they establish policy.

The Eleventh Circuit followed *McMillian's* framework in this case. Petitioner does not show otherwise. Rather, the Petitioner objects to the Eleventh Circuit's conclusions regarding the state of Georgia law. The Respondent asserts that the Eleventh Circuit was entirely correct in its analysis regarding the application of *McMillian's* framework to Georgia law. Regardless, because the result in this case rests upon such analysis, and not an analysis of federal law, this Court should deny the Petition.

As this Court stated in *McMillian*:

> The Court of Appeals for the Eleventh Circuit determined that under Alabama law, a Sheriff acting in his law enforcement capacity is not a

> policy maker for the county. Since the jurisdiction of the Court of Appeals includes Alabama, *we defer considerably to that Court's expertise in interpreting Alabama law*. *McMillian*, 520 U.S. at 786 (Emphasis supplied). *See also*, *Pembaur v. Cincinnati*, 475 U.S. 469, 484, n.13, 106 Sup. Ct. 1292, 1301, n.13 (1986) ("We generally accord great deference to the interpretation and application of state law by the Courts of Appeal").

In addition, *McMillian* pointed out that two of the three judges on the Eleventh Circuit's panel were based in Alabama. *McMillian, supra* at 786, n.3. In the present case, the author of the majority opinion for the *en banc* court, Honorable Frank M. Hull, is based in Georgia. Judge Hull has previously served as a State Court judge, Superior Court judge, and U. S. District Court judge in the State of Georgia, so the same deference is called for herein.

The Eleventh Circuit correctly followed this Court's prior precedents, particularly *McMillian*. Therefore, no compelling reason exists to grant the Petition.

RESPONSE TO PETITIONER'S STATEMENT OF THE CASE

For the most part, the Petitioner's "Statement of the Case" accurately reflects the procedural progression of this case. However, because there are a couple of factual inaccuracies, Respondent is compelled by Supreme Court Rule 15.2 to point out a couple of misstatements contained in the Petition.

First, Petitioner asserts that there is no evidence that Petitioner "punched" a law enforcement officer. Petition at 3, n.1. That is a misstatement of fact. (R2-107-13; Dep. of Chris Crews). There is evidence that Petitioner "punched" a police officer.

The Petitioner also erroneously states that Sheriff Peterson had no published policy regarding the use of force by deputies at the Clinch County jail. Petition at 3-4. Such assertion is simply incorrect. (R2-108-20; Exhibit 1; Dep. of Winston Peterson).

Finally, though not in the Statement of the Case, but rather Petitioner's brief, the Petitioner makes a serious misstatement with regard to his contention that "there is no dispute that: . . . Clinch County operates the Clinch County jail, App. 36." Petition at 19. In fact, it is clear both factually and legally that Sheriff Winston Peterson operates the Clinch County jail as is required of him by state law. Petition at 22 ("Sheriff Peterson's authority and duty to administer the jail in his jurisdiction flows from the State, not Clinch County.")

Further, Petitioner's statement that there is no dispute that "[n]o State funds would be used to pay any judgment against Sheriff Peterson if he were found liable for violations of § 1983" is an inaccurate description of the Eleventh Circuit's analysis. Rather, the majority noted that no Georgia law appeared to expressly require State funds to pay an adverse judgment against Sheriff Peterson, but it was clear that "both County and State funds are implicated . . . " Pet., App. at 46-47.

RESPONSE TO PETITIONER'S REASONS FOR GRANTING THE WRIT

The Petitioner puts forth three separate reasons for granting the Writ. Each reason is legally deficient and should not cause this Court to grant the Petition.

I. THE ELEVENTH CIRCUIT PROPERLY APPLIED *McMILLIAN V. MONROE COUNTY, ALABAMA.*

The Petitioner either misstates, or misunderstands, the Eleventh Circuit's analysis of *McMillian*. Petitioner asserts that the Eleventh Circuit's decision in this case will "shield all governmental entities for whom the sheriff acts, including agents of the sheriff, from § 1983 claims for use of excessive force. . . . " Petition at 17. That is simply an incorrect description of the Eleventh Circuit's holding. Clearly, the Eleventh Circuit's decision dealt only with claims against the Sheriff *in his official capacity*. In conducting such analysis, the Eleventh Circuit appropriately followed *McMillian* and a number of this Court's decisions dealing with Eleventh Amendment immunity. *E.g., Regents of the University of California v. Doe*, 519 U.S. 425 (1997).

The Eleventh Circuit did not eliminate excessive force claims under 42 U.S.C. § 1983. In fact, it is clear from the decisions of both the District Court in this case and the Eleventh Circuit's decision that such claims may be pursued against those individuals who are alleged to have committed constitutional violations. Petition, App. at 7, n.7; App. at 156-57. In this case, the Petitioner's claims against Sheriff Peterson, in his individual capacity, and the other defendants just happened to be disposed of

either by way of summary judgment or dismissal. *Id.;* Petition, App. 6, n.5.

The concerns that Petitioner sets out are unfounded. The Eleventh Circuit's decision in this case does not change civil rights liability in the drastic way described by Petitioner. Actually, it does not even change civil rights liability within the Eleventh Circuit or in District Courts in the State of Georgia. The decision by the Eleventh Circuit in this case simply recognized the appropriate application of this Court's decisions regarding both 42 U.S.C. § 1983 and the Eleventh Amendment to the United States Constitution with respect to sheriffs in the State of Georgia.

As the Eleventh Circuit noted, they had not previously been asked to specifically analyze the issue presented herein with regard to Georgia sheriffs. They had done so with regard to Alabama sheriffs and this Court affirmed the Eleventh Circuit's view of the applicable federal law in *McMillian, supra.*

The Eleventh Circuit's *en banc* decision is correct in all respects. *See, McMillian, supra*; and *Regents of the University of California v. Doe, supra.*

II. IT IS LEGALLY INSIGNIFICANT WHETHER THE MAJORITY OPINION CONFLICTS WITH OTHER FEDERAL COURTS OF APPEALS BECAUSE STATE LAW WITHIN THOSE CIRCUITS MAY DIFFER FROM GEORGIA LAW.

Petitioner asserts that there should be some concern because the Eleventh Circuit's decision in this case appears to reach a result different from that reached by other Circuit Courts in similar, but not identical, circumstances.

The Petitioner likely describes the issue in that manner in an effort to convince this Court that this is one of those cases in which "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter. . . . " Supreme Court Rule 10(a). However, even a cursory comparison of the decisions from other circuits relied upon by the Petitioner and the Eleventh Circuit's decision in this case reveals that the conflict, to the extent there is one, is between state law in those various jurisdictions. The Eleventh Circuit properly followed applicable federal law, *McMillian, supra* and *Regents of the University of California v. Doe, supra*. There is no conflict, only differing results based upon the proper application of federal law.

Petitioner expresses a concern that if the "majority position were adopted as a fair reading of *McMillian*, each of these circuits would have to re-examine the relevant state law." Petition at 25. This Court, in *McMillian,* has already rejected any such concern.

> Petitioner argues that this conclusion will create a lack of uniformity in Alabama and throughout the country. First, he argues that it is anomalous to have 67 different 'state policy makers' in the person of Alabama's 67 county sheriffs, all of whom may have different 'state law enforcement policies' in their counties. Second, he points out that most Federal Courts of Appeals have found county sheriffs to be county, not state, officials, and he implies that our affirmance of the Court of Appeals will either call those decisions into question or create an unacceptable patchwork

> of rulings as to § 1983 liability of counties for the acts of their sheriffs. *We reject both arguments.*
>
> . . .
>
> Petitioner's second concern is that under our holding here, sheriffs will be characterized differently in different states. But while it might be easier to decide cases arising under § 1983 and [*Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978)] if we insisted on a uniform, national characterization for all sheriffs, such a blunderbuss approach would ignore a crucial axiom of our government: the states have wide authority to set up their state and local governments as they wish. Understandably, then, the importance of counties and the nature of the county government have varied historically from region to region and from State to State.
>
> . . .
>
> Thus, since it is entirely natural that both the role of sheriffs and the importance of counties vary from State to State, there is no inconsistency created by court decisions if the sheriff is a county officer in one state and not in another. *McMillian, supra,* 520 U.S. at 793-95 (Emphasis supplied).

Respondent also believes that it is worth pointing out that the Eleventh Circuit's decision did not declare sheriffs to be state policy makers in some categorical, all or nothing approach. Both *McMillian* and this Court's Eleventh Amendment jurisprudence have cautioned against such an approach. The Eleventh Circuit followed this Court's directives and decided that Georgia sheriffs were state policy makers, thus entitled to Eleventh Amendment

immunity, only with regard to the particular function at issue in this case.

III. PETITIONER IS INCORRECT THAT THIS CASE RAISES ISSUES AS TO THE CONTINUED VIABILITY OF § 1983 AS A REMEDY IN CASES INVOLVING COUNTY SHERIFFS

As noted previously, Plaintiffs in cases such as the present one are not simply left with no potential remedies. The Eleventh Circuit was clear that this case did not address the individual liabilities of sheriffs or their deputies. In this case, summary judgment was determined to be appropriate with regard to Sheriff Peterson in his individual capacity, though on grounds unrelated to the issues raised on appeal. Further, the alleged primary actor, the Sheriff's chief jailer, was sued as well. However, the claims against him were dismissed. The Eleventh Circuit's decision in this matter does nothing to change the availability of remedies with respect to individuals that commit constitutional violations. Clearly, it does affect the Petitioner's ability to pursue claims against sheriffs in their official capacity. However, nowhere is it written in the Eleventh Amendment, or 42 U.S.C. § 1983, that liability against such a defendant is guaranteed. Petitioner obviously is concerned about the potential jury appeal between suing an individual officer and suing a faceless governmental entity. That is an insufficient reason for this Court to grant the Petition.

Further, Petitioner seriously misstates the holding of the Eleventh Circuit Court of Appeals in a case somewhat related to this matter. *Grech v. Clayton County*, 335 F.3d 1326 (11th Cir. 2003). Both this case and *Grech* were orally argued before the *en banc* Eleventh Circuit on the same

day. Petitioner states that "the Eleventh Circuit has decided that the county is entitled to Eleventh Amendment immunity for claims brought against a sheriff under § 1983 in his or her official capacity." Petition at 27, n.23. *Grech* held no such thing. In fact, *Grech* was not an Eleventh Amendment case. *Grech* did not address Eleventh Amendment issues but it simply applied this Court's decision in *McMillian* to determine that Clayton County, under traditional governmental entity liability principles in § 1983 cases, could only be held liable for its own policies, and not those of a state policy maker. The state policy maker in that instance did happen to be the sheriff. However, *Grech* in no way extended Eleventh Amendment immunity to a county.

Finally, the Respondent points out that the Petitioner, and future plaintiffs, have available numerous remedies under state law. Petitioner is not being left without a remedy as a result of the Eleventh Circuit's decision. Accordingly, there is no issue presented in the Petition for Writ of Certiorari that should lead this Court to grant the Petition.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

This 24th day of November, 2003.

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No. 03-635

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In The
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WILLIE SANTONIO MANDERS,

Petitioner,

v.

WINSTON PETERSON, in his official capacity as Sheriff of Clinch County, Georgia,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITIONER'S REPLY BRIEF

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REPLY TO RESPONDENT'S RESPONSE TO STATEMENT OF THE CASE

In his Brief Respondent addresses certain statements made in Petitioner's Statement of the Case as though they were not supported by the facts in the Record. Respondent's Brief pp. 2-3. As to these concerns, Petitioner responds. First, as to the allegation that there is evidence in the record that Petitioner "punched a police officer." The allegation is made in the record. (R2-107-13; dep. of Cris Crews) However, there are no facts in the record of this case that would confirm or substantiate the truth of the allegation. Despite the absence of any corroboration or evidence to support the statement, the majority asserts that Petitioner "punched a police officer." App. 2-3. The assertion is made as though the truth of the allegation has been established by evidence in the record and its truth is beyond dispute. In fact there is no evidence in the record that the allegation as made is true.

Second, as to Respondent's assertion that there were use of force policies at the Clinch County Jail, Respondent's Brief p. 3, the district court found there to be an issue of fact only as to whether "Sheriff Peterson had no policy or procedure and no training for the use of force in dealing with inmates at the Clinch County Jail (Sheriff Peterson's dep. p. 9)," or whether beating prisoners "who bite and scratch" was a proper articulation of the relevant policy. App. 149. This is the state of the record on this issue. There is no disputed fact as to whether Sheriff Peterson had use of force policies at the Clinch County Jail. The district court found as an undisputed fact that he did not.

The fact that Sheriff Peterson had policies for the use of force by deputies at venues other than the jail may be evidence that the sheriff made a distinction between the jail and other areas for which he was responsible. If this were in fact the case, it would undercut the majority opinion that the sheriff's use of force authority in Georgia is a seamless cloak that covers him/her regardless of location or the circumstance where it would be applied. App. 31.

Third, as for Respondent's assertion that the sheriff operates the Clinch County Jail, Respondent's Brief p. 3, the majority notes that "Georgia counties have obligations involving the jail structure and inmates' food, clothing, and medical necessities." These obligations are distinct from the sheriff's, "force policy at the jail." App. 36. Indeed the county's obligations to the inmate are more detailed than that. The relevant Georgia statutes state:

> Responsibilities of governmental unit with custody of inmate generally; costs of emergency and follow-up care; access to medical services or hospital care for inmates.
>
> (a) Except as provided in subsection (b) of this Code section, it shall be the responsibility of the governmental unit, subdivision, or agency having the physical custody of an inmate to maintain the inmate, furnishing him food, clothing, and any needed medical and hospital attention; to defend any habeas corpus or other proceedings instituted by or on behalf of the inmate; and to bear all expenses relative to any escape and recapture, including the expenses of extradition. Except as provided in subsection (b) of this Code section, it shall be the responsibility of the department to bear the costs of any reasonable and

> necessary emergency medical and hospital care which is provided to any inmate after the receipt by the department of the notice provided by subsection (a) of Code Section 42-5-50 who is in the physical custody of any other political subdivision or governmental agency of this state, except a county correctional institution, if the inmate is available and eligible for the transfer of his custody to the department pursuant to Code Section 42-5-50.

O.C.G.A. §42-5-2.

> (a) By virtue of their offices, sheriffs are jailers of the counties and have the authority to appoint other jailers, subject to the supervision of the county governing authority, as prescribed by law.

O.C.G.A. §42-4-1

As demonstrated by these statutes, the county is the entity charged by Georgia law to maintain and operate the jail and the sheriff acts as jailer of the county. When the statutes are read side by side, it seems clear that in terms of operating the jail, the sheriff is an agent of the county and operates the jail for the county. Petitioner stands by his assertion that Clinch County operates the Jail.

Fourth, as for Respondent's assertion as to the issue of financial responsibility, Respondent's Brief 3, the majority stated, " . . . Clinch County is not required to pay," and further, the majority could "locate no Georgia law expressly requiring the State to pay an adverse judgment against Sheriff Peterson in his official capacity." App. 46. Contrary to Respondent's assertion, Petitioner accurately stated the majority's position on that fact.

REPLY TO RESPONDENT ON REASONS FOR PETITION

I. APPLICATION OF *MCMILLIAN V. MONROE COUNTY, ALABAMA*

It is clear from the seventh page of the majority opinion that this case is about the sheriff in his official capacity. App. 7. Petitioner did not attempt to broaden the scope of his argument or the impact of the majority opinion beyond that single point. The concerns expressed by Petitioner were concerns about the consequences that occur when the sheriff in his/her official capacity is responsible for the use of force by a deputy or agent in the context of the county jail. The majority fashioned a rule in the case, *sub judice*, that applies to the use of force by an agent of the sheriff ***regardless*** of the location where the force is used. App. 31. In the majority's view in the use of force the sheriff becomes "an arm of the state" and, therefore, immune under the Eleventh Amendment from suit in federal court under §1983. *Id.* By this petition that Petitioner seeks clarification of *McMillian* in light of the majority's conclusion on this point.

II. CONFLICT WITH OTHER CIRCUITS

The point Petitioner sought to make here is that other circuits have examined other state constitutions and statutes, California[1], Illinois[2], Massachusetts[3],

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[1] *Streit v. County of Los Angeles*, 236 F.3d 552 (9th Cir. 2001).

[2] *DeGenova v. Sheriff of DuPage County*, 209 F.3d 973 (7th Cir. 2000).

[3] *Blackburn v. Snow*, 771 F.2d 556 (1st Cir. 1985).

Michigan[4], Mississippi[5], and Texas,[6] that contain the same provisions that are found in the Georgia constitution and statutes and decided that the sheriff is a county official when dealing with jail issues. Contrary to Respondent's assertion, Respondent's Brief p. 6, the statutory and constitutional language examined by the majority in the case, *sub judice*, does not vary from that in other jurisdictions so as to justify a different result.

III. ISSUE OF CONTINUED VIABILITY OF §1983 AS A REMEDY IN CASES INVOLVING COUNTY SHERIFFS IN USE OF FORCE CASES

Once again, the context of this case is the sheriff being sued in his/her official capacity. Petition at 26. In the context of the facts and rulings in this case, Petitioner has potential §1983 claims against Clinch County; however, claims against the arresting officer, the chief jailer, and Sheriff Peterson in his individual capacity have been dismissed by the district court. *Id.*, 27, n.2. Because of the language of the Georgia Tort Claims Act, O.C.G.A. §50-21-24, a state official cannot be sued in his/her official capacity for assault or battery. Petition 19, n. 18. Therefore, no state law claim can be brought against a Georgia sheriff in his/her official capacity for use of force by him/her or the sheriff's deputies.

---

[4] *Marchese v. Lucas*, 758 F.2d 181 (6th Cir. 1985).

[5] *Harter v. Vernon*, 101 F.3d 334 (4th Cir. 1996).

[6] *Turner v. Upton County, Texas*, 915 F.2d 133 (5th Cir. 1990).

The difference between arguing, as Respondent has in this case, App. 2, that *Grech v. Clayton County*, 335 F.3d 1326 (11th Cir. 2003) holds that a Georgia county is not liable under §1983 "for policies, practices, or customs established by the sheriff," and concluding, as does the Petitioner, that *Grech* holds that the county would be immune from the §1983 claims that have been brought in this case against the sheriff, Petition 27, n. 23, is not one of substance. The result in applying either articulation is the same. The extent to which the court in *Grech* made an immunity analysis in deciding that case is a question Petitioner is not competent to answer.

It is Petitioner's position that under *Grech,* Petitioner may have no claim against Clinch County for the beating suffered by him in the Clinch County jail. Given the majority opinion in the case, *sub judice*, and because the claims against the other individual defendants, as well as the sheriff in his individual capacity, have been dismissed, Petitioner would then have no remedy against any potential defendant.

Petitioner did not intend to argue that the majority opinion extends the concept of Eleventh Amendment immunity to include Clinch County, Petition 27, n. 23. Petitioner only sought to make the point that under an Eleventh Amendment analysis of the Petitioner's §1983 claims against Sheriff Peterson and Clinch County, an application of *Grech* may lead to the conclusion that Clinch County is not liable. As to the issue of whether *McMillian* or *Grech* is an "Eleventh Amendment case," Respondent's Brief 9, Petitioner respectfully awaits the decision of this Court.

CONCLUSION

For the foregoing reasons, as well as those stated in the petition, a writ of certiorari should issue to review the decision of the Eleventh Circuit in this case.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

WILLIE SANTONIO MANDERS Plaintiff	)	
v.	)	CASE NUMBER: 7:99-CV-42
TRUMAN LEE, and CHRIS CREWS, a/k/a BART CREWS, individually, and as employees of the City of Homerville, the CITY OF HOMERVILLE, GEORGIA, and WINSTON PETERSON, and ALAN BROWN, individually, and as employees of Clinch County, and CLINCH COUNTY, GEORGIA Defendants	)	

DEFENDANT WINSTON PETERSON AND CLINCH COUNTY'S RESPONSE TO COURT'S SEPTEMBER 22, 2003 ORDER

Pursuant to directions from the Court on September 22, 2003, the above-referenced defendants hereby provide this succinct statement as to what claims, if any, and what defendants, if any, remain for further proceedings and disposition in this Court . . .

I. ONLY ONE DEFENDANT REMAINS IN THIS CASE, CLINCH COUNTY, GEORGIA

By virtue of the proceedings in this case to this point, both in the District Court and in the United States Court

of Appeals for the Eleventh Circuit, all defendants have been removed from this action, except Clinch County, Georgia. After defendants' Motion for Summary Judgment was ruled upon, only Sheriff Peterson, in his official capacity, and Clinch County, Georgia, remained as defendants. Sheriff Peterson, in his official capacity, enjoyed the right to an interlocutory appeal, while Clinch County, Georgia did not possess that same right. The Eleventh Circuit's opinion disposed of all claims against Sheriff Peterson.

II. THE ONLY CLAIM REMAINING AGAINST CLINCH COUNTY, GEORGIA INVOLVES PLAINTIFF'S ALLEGATIONS THAT CLINCH COUNTY, GEORGIA IS LIABLE BASED UPON THE POLICIES, PRACTICES AND CUSTOMS ESTABLISHED BY SHERIFF PETERSON IN CONNECTION WITH THE SHERIFF'S DEPARTMENT.

Defendant Clinch County, Georgia. contends that plaintiffs claims are disposed of by the Eleventh Circuit's ruling in the instant case and in its ruling in the case of *Grech v. Clayton County. Georgia*, 335 F.3d 1326 (11th Cir. 2003). In *Grech*, the Eleventh Circuit determined that counties in Georgia have no authority or control over the sheriff's law enforcement functions. The Court went on to hold that Clayton County, Georgia could not be liable under 42 U.S.C. § 1983 for policies, practices, or customs established by the sheriff. In this case, the Eleventh Circuit determined that Sheriff Peterson, to the extent he was establishing policy, did so on behalf of the State of Georgia, not Clinch County. As a result, the Eleventh Circuit's decisions in this case and in the *Grech v. Clayton*

County case makes clear that Clinch County, Georgia, is entitled to summary judgment in its favor.

Accordingly, defendant Clinch County, Georgia, asks the Court to either enter summary judgment, *sua sponte,* or to establish a new scheduling order providing defendant Clinch County, Georgia, with the opportunity to renew its motion for summary judgment based upon the Eleventh Circuits recent decisions.

Respectfully submitted, this 25th day of September, 2003.

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